

No. 710

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

THE ALASKA UNITED GOLD
MINING COMPANY,

Plaintiff in Error,

vs.

HENRY MUSSET, as Administrator
of the Estate of Edward Hegman,
Deceased,

Defendant in Error.

FILED

JUL 27 1901

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District
Court for Alaska, Division No. 1.



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*In the United States District Court for Alaska, Division No.
1, at Juneau.*

HENRY MUSSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

No. 23A.

THE ALASKA UNITED GOLD MIN-
ING CO.,

Defendant.

Writ of Error (Original).

United States of America--ss.

The President of the United States, to the Judge of the
United States District Court for Alaska, Division No.
1, at Juneau, Greeting:

Because in the record and proceedings, as also in the
rendition of the judgment of a plea which is in the said
District Court, before you, or some of you, between Henry
Musset, as administrator of the estate of Edward Heg-
man, deceased, plaintiff, and The Alaska United Gold
Mining Co., defendant, a manifest error hath happened,
to the great damage of the said Alaska United Gold Min-
ing Co., as is said and appear by the complaint; we, be-

ing willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said Court in the city of San Francisco, together with this writ, so that you have the same at the said place on the 10th day of June next, that the record and proceedings aforesaid being inspected, the said Justices of the said Circuit Court of Appeals may cause further to be done therein, to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 15 day of April, in the year of our Lord, one thousand nine hundred and one, and of the independence of the United States the one hundred and twenty-sixth.

[Seal]

W. J. HILLS,

Clerk of the United States District Court for Alaska, Division No. 1.

The foregoing writ is hereby allowed.

M. C. BROWN,

Judge.

[Endorsed]: Original. No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Musset, as Administrator of the Estate of Edw'd

Hegman, Deceased, Plaintiff, vs. Alaska United Gold Mining Co., Defendant. Writ of Error. Filed Apr. 17, 1901. W J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant. Office, Juneau, Alaska.

No. 710. United States Circuit Court of Appeals for the Ninth Circuit. Alaska United Gold Mining Company vs. Henry Musset, as Administrator, etc. Original Writ of Error. Filed June 13, 1901. F. D. Monckton, Clerk.



In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN
ING CO.,

Defendant.

No. 23A.

Citation (Original).

United States of America—ss.

To Henry Musset, as Administrator of the Estate of Edward Hegman, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the city of San Francisco, on the 20th day of June, 1901, pursuant to a writ of error filed in the clerk's office of the United States District Court for Alaska, Division No. 1, at Juneau, wherein the Alaska United Gold Mining Co. is the plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated May 13th, 1901.

MELVILLE C. BROWN,
Judge.

United States,
District of Alaska, } ss.
Division No. 1. }

I hereby certify that I received the within citation of error May 20th, 1901, and served the same May 20th, 1901, in Juneau, Alaska, by delivering to W. E. Crews, one of plaintiff's attorney, a certified copy of the within citation, certified to by Malony and Cobb, defendant's attorney, to the said W. E. Crews, personally.

Dated Juneau, May 20th, 1901.

JAMES M. SHOUP,
United States Marshal.
By W. S. Staley,
Office Deputy.

Marshal's Fees:

Services \$3.00

Paid by defendant's attorneys.

[Endorsed]: Original. No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Musset, as Administrator of the Estate of E. Hegman, Deceased, Plaintiff, vs. The Alaska United Gold Mining Co., Defendant. Citation in Error. Filed May 20, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant, Office, Juneau, Alaska.

No. 710. United States Circuit Court of Appeals for the Ninth Circuit. Alaska United Gold Mining Company vs. Henry Musset, as Administrator, etc. Original Citation. Filed June 13, 1901. F. D. Monckton, Clerk.



United States of America, }
District of Alaska. } ss.

Pleas and proceedings in a cause at law, tried at a special term of the United States District Court for Alaska, Division No. 1, begun and held at Juneau, in said District, on the 10th day of December, 1900, and ending on the 30th day of March, 1901.

Present: The Honorable M. C. BROWN, Judge; Honorable J. M. SHOUP, Marshal; Honorable ROBERT A. FREIDRICKS, District Attorney; and Honorable W. J. HILLS, Clerk.

On the 27th day of November, 1900, Henry Musset, as administrator of the estate of Edward Hegman, deceased, filed his complaint against the Alaska United Gold Mining Company, which complaint is in words and figures as follows:

In the District Court of the District of Alaska.

HENRY *MUSET*, Administrator of the
Estate of Edward Hegman, Deceased,
Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING COMPANY (a Corporation),
Defendant.

Complaint.

The plaintiff complains of the defendant and alleges:

I.

That defendant is a corporation duly organized and existing now, and at all times hereinafter mentioned was, engaged in conducting, operating, and working the gold mines of the said company at Douglas Island, in the District of Alaska.

II.

That Edward Hegman died at Douglas Island, Alaska, on the 9th day of October, 1900, leaving a mother, one sister and an aunt, residing, respectively, the said mother residing at Vasa, Finland, and the sister in the State of Michigan, U. S. A., as his sole surviving heirs at law, and this plaintiff as his principal creditor, residing at Doug-

Was, in the District of Alaska and thereafter on the 21st day of November 1900, this plaintiff was duly appointed and qualified as administrator of the estate of the said Edward Hegman, and this plaintiff is now acting as such administrator.

III.

That on October 9th, 1900, and for a long time prior thereto, the said Edward Hegman was an employee of the defendant corporation, working in their said mine, known as the Seven Hundred Foot Claim, then and there operated by defendant, as a miner, running and operating what is commonly known as a machine drill, in the underground workings of said mine. That while so employed and while performing his duties as such employee, and acting under the directions and instructions of the foreman of said mine and the other agents, officers and vice-principals of defendant in control of that branch and department of the defendant workings, wherein the said Edward Hegman was so engaged.

That while the said Edward Hegman, and his colaborers were at the bottom of a shaft in the said mine sinking the same, pursuant to the orders and directions of the foreman and vice-principal aforesaid, while they had sunk drill holes in the bottom thereof and had loaded the same with powder and fuse, preparatory to blasting and after having given the proper signals indicating their purpose and intentions of lighting and firing off said blast, and after the parties in charge of the hoist had indicated by signal that they understood that the said blasts were

about to be lighted and shot off, thus indicating their readiness and ability to hoist the said Edward Hegman and his associates out of said shaft after the fuse connected with the charge had been lighted and before the said blast went off or exploded.

That acting upon said signals and believing in the safety of the regulations, machinery, and operations thereof, the said Edward Hegman and his associates did light said fuses and gave the proper signal to the parties in charge of the elevator to be hoisted from said shaft, whereupon and after the said Edward Hegman and his associates had made all preparations and climbed into the elevator to be hoisted to a place of safety they were informed by the party above them and in charge of the elevator that the air had been cut off from the surface about five hundred (500) feet above and it was impossible for the hoist or elevator to be raised. After making every possible effort to induce the parties in charge of the elevator to hoist the same, the said Edward Hegman and his associates attempted to escape death and injury from the explosion of said blast by climbing the rope attached to the hoist or elevator. That the said Edward Hegman, though making every effort possible to so escape, and resorting to every possible means to avoid the consequences of the explosion could not possibly do so, whereupon the said blast did explode, thereby mangling and wounding the said Edward Hegman, whereby he did then and there die.

IV.

The plaintiff alleges that the said Edward Hegman did in no way contribute to his said death, and that the same occurred without any fault or negligence on his part.

V.

The plaintiff further alleges that the death of the said Edward Hegman was brought about through the gross negligence and carelessness of the officers, foreman and vice-principal of said defendant corporation in causing said air and power to be disconnected and cut off, so that the said elevator could not be hoisted and the said Hegman be removed from the said cause of danger.

Plaintiff further alleges that said officers and vice-principals of said corporation well knew, or ought to have known, at the time he caused said air to be disconnected that the said Hegman was in said place of danger, and could not escape without the use of said power, which the said officers aforesaid wrongfully, unlawfully and negligently caused to be disconnected.

VI.

That at the time of his death, and for a long time prior thereto, the said Edward Hegman was a strong and healthy and robust man, in the prime of life, being the age of 30 years at the time of his death and at all times contributed to the support of his mother, sister, and aunt, who were dependent on him. That by reason of the wrongful, negligent, and unlawful killing of the said Edward Hegman by the defendant as aforesaid the said mother, sister, and aunt, heirs at law of the said Edward

Hegman, have been deprived of the support and earnings of the said Edward Hegman to their great and irreparable injury and damage.

VII.

That by reason of the premises and under the provisions of section 353 of the laws of the District of Alaska the defendant corporation in negligently, wrongfully, and unlawfully causing the death of the said Edward Hegman as aforesaid, damaged the heirs and estate of the said Edward Hegman and this plaintiff in the sum of ten thousand (\$10,000) dollars.

Wherefore, plaintiff prays judgment against the defendant for the sum of ten thousand (\$10,000) dollars, together with the costs and disbursements of this action.

(Signed) W. E. CREWS,
Attorney for the Plaintiff.

United States of America, }
District of Alaska. } ss.

Henry Muset, being first duly sworn upon his oath says: I am the plaintiff in the above-entitled action; I have read the foregoing complaint and know the contents thereof, and the same is true.

(Signed) HENRY MUSET.

Subscribed and sworn to before me this 27th day of November, A. D. 1900.

[Seal]

W. J. HILLS,
Clerk of Court.

[Endorsed]: 23A. In the District Court for the District of Alaska. Henry Musset, Administrator of the Estate of Edward Hegman, Deceased, vs. The Alaska United Gold Mining Company. Complaint. Filed Nov. 27th, 1900. W. J. Hills, Clerk. W. E. Crews, Attorney for Plaintiff.

Afterwards, on the 28th day of December, 1900, the defendant The Alaska United Gold Mining Co., filed its special answer, which is in words and figures as follows, to wit:

In the United States District Court for Alaska, Division No. 1 at Juneau.

HENRY MUSET, Administrator of the
Estate of Edward Hegman, Deceased,
Plaintiff,

vs.

ALASKA UNITED GOLD MINING
CO.,
Defendant.

Special Answer.

Now comes the defendant and answering specially the complaint of plaintiff, by way of a plea to the same for defense thereto, alleges:

That the plaintiff has not the legal capacity to maintain this suit; for that plaintiff is suing herein as administrator of the estate of Edward Hegman deceased, and for an alleged tort against said Edward Hegman, under and by virtue of the provision of section 353 of the Alaska Code, saving such cause of action to him as such administrator; but the defendant denies that plaintiff Henry Muset is the duly qualified and acting administrator of the estate of Edward Hegman, deceased; denies that on the 21st day of November, 1900, or at any other time, plaintiff was duly appointed and qualified as administrator of the estate of said Edward Hegman, or that plaintiff is now acting as such administrator or has any authority or power so to act, for that the letters of administration, under and by virtue of which plaintiff claims the appointment and authority aforesaid, were granted and issued to him upon an ex parte application therefor without any process being issued or any notice whatsoever being given by the Court granting the same. That said pretended letters of administration were issued by the United States Commissioner's Court sitting as a Probate Court at Douglas Island, Alaska, which Court had full probate jurisdiction, but said Court never obtained any jurisdiction to make said appointment, for the reason that no process was ever issued and no notice ever given of a hearing of said application. That said application for letters of administration was heard and granted on the day such application was made in a purely ex parte proceeding. All of which defendant is ready to verify.

Wherefore, defendant prays judgment of the Court whether it need make any other or further answer to said complaint.

(Signed) MALONY & COBB,
Attorneys for Defendant.

[Endorsed]: No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, Admr. of the Est. of Edward Hegman, Dec'd, Plaintiff, vs. The Alaska United Gold Mining Co., a Corp., Defendant. Special Answer. Filed Dec. 28, 1900. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant.

And on the same day the plaintiff filed his motion as follows:

In the United States District Court for Alaska, Division No. 1 at Juneau.

HENRY MUSET, Administrator of the
Estate of Edward Hegman, Deceased,
Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN
ING COMPANY (a Corporation),
Defendant.

Motion for Order of Default.

I.

Comes now the plaintiff above named, and moves the Court for an order of default and judgment against the defendant for want of an answer.

II.

For the reason that the pleading filed by the defendants marked special answer states no facts which tend to constitute a defense to plaintiff's complaint.

(Signed) W. E. CREWS,
Attorney for Plaintiff.

[Endorsed]: No. 23A. In the District Court for The District of Alaska, Division No. 1. Henry Musset, Admr. of the Estate of Edward Hegman, Plaintiff, vs. The Alaska United Gold Mining Co., a Corporation, Defendant. Motion. Filed Feb. 28, 1900. W. J. Hills, Clerk. W. E. Crews, Attorney for Plaintiff.

Afterwards, on the 31st day of Dec., 1900, the Court made and entered the following order, to wit:

HENRY MUSET, Administrator of the Estate of Edward Hegman, Deceased, Plaintiff,	} No. 23A.
vs.	
ALASKA UNITED GOLD MINING CO., Defendant.	

Order Denying Motion, etc.

This cause coming on this day to be heard upon the motion of defendant (plaintiff) for judgment herein for want of answer the Court having the argument of W. E. Crews, Esq., in support of said motion and J. H. Cobb, Esq., in opposition thereto, denies said motion, holding the special answer of defendant insufficient under a strict con-

struction of the statute, but allows defendant to plead over, and grants defendant five days from this date within which to answer, counsel for defendant duly excepting thereto.

On January 4th, 1901, the defendant filed its answer, which is as follows:

In the United States District Court for Alaska, Division No. 1 at Juneau.

HENRY MUSET, Administrator of the
Estate of Edward Hegman, Deceased,
Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING CO.,
Defendant.

Answer.

The defendant, for answer to the complaint herein, alleges:

I.

It admits the allegations of paragraph I of said complaint.

II.

It admits that Edward Hegman died at Douglas Island, Alaska, on the 9th day of October, 1900; but de-

fendant has no information or belief as to whether he left a mother or sister surviving him and therefore denies the same. Defendant also denies upon information and belief that the said plaintiff is the duly appointed and qualified administrator of the estate of Edward Hegman, deceased.

III.

Defendant admits that on the 9th day of October, 1900, and for a long time prior thereto, the deceased, Edward Hegman, had been in its employ as a miner, operating a machine drill. It also admits that on the said 9th day of October, 1900, said Edward Hegman was killed by an accident in the "700" mine, owned and operated by defendant; but it denies that said accident and death was caused by any negligence of the defendant or its vice-principal; but it alleges the truth and fact to be that the accident causing the death of Edward Hegman was due solely to the negligence and carelessness of the said Edward Hegman, and to the negligence and carelessness of his fellow-servants.

IV.

Defendant denies that the said Edward Hegman did in no way contribute to his said death, or that the same occurred without fault or negligence on his part.

V.

Defendant denies that the death of the said Edward Hegman was brought about through the negligence of the officers and vice-principals of the defendant corporation,

as alleged; but it says that if said accident was due to the negligence of anyone other than deceased himself, it was the negligence of the fellow-servants of deceased.

VI.

Defendant has no knowledge or information as to whether the deceased contributed to the support of his mother, sister, and aunt, and therefore denies the same, and denies that they were dependent upon him. It denies that there was any negligent, wrongful, or unlawful killing of Edward Hegman by the defendant; or that the heirs at law have been deprived of the support and earnings of the said Hegman.

VII.

Defendant denies that the heirs and estate of the said Edward Hegman have been damaged by defendant in the sum of \$10,000 or any other sum whatsoever,

Wherefore, defendant prays that it be hence discharged with its costs in this behalf incurred.

(Signed) MALONY & COBB,

Attorneys for Defendant.

[Endorsed]: No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, Admr. of the Estate of Edward Hegman, Dec'd, Plaintiff, vs. The Alaska United Gold Mining Co., Defendant. Answer. Filed Jan. 4, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant.

On January 11th, 1901, the plaintiff filed his reply, which is as follows:

In the District Court of the District of Alaska.

HENRY MUSET, Administrator of the
Estate of Edward Hegman, Deceased,
Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING CO. (a Corporation),
Defendant.

Reply.

The plaintiff in reply to the answer herein alleges that he denies that the death of the said Edward Hegman was due to the negligence or carelessness of the fellow-servants of the said Edward Hegman.

(Signed) CREWS & HELLENTHAL,

Attorneys for Plaintiff.

United States of America, }
 District of Alaska. } ss.

Henry Muset, being first duly sworn, upon his oath says: I am the plaintiff in the above-entitled action; I have read the foregoing reply and know the contents thereof, and the same is true.

Subscribed and sworn to before me this — day of January, A. D. 1901.

[Endorsed]: No. 23A. In the District Court for the District Court for the District of Alaska, Division No. 1, Henry Muset, Admr., Plaintiff vs. The Alaska United Gold Mining Co., Defendant. Reply. Filed Jan. 11, 1901. W. J. Hills, Clerk. W. E. Crews, Attorney for Plaintiff.

On February 14th, 1901, the jury was selected impaneled, and sworn, who having heard the evidence, the argument of counsel, and instructions of the Court, retired, to consider of their verdict; and afterwards on February 16th, 1901, returned into open court the following verdict, to wit:

The United States of America, }
District of Alaska. } ss.

In the District Court of the United States, in and for the District of Alaska, Division No. 1.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING COMPANY,

Defendant. }

Verdict.

We the jury impaneled and sworn in the above-entitled cause of action, find for the plaintiff in the sum of (\$10,000.00) ten thousand dollars.

(Signed) S. B. AGNEW,
Foreman.

[Endorsed]: 23A. The United States of America, District of Alaska—ss. In the District Court for the District of Alaska, Division No. 1. Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, Plaintiff; vs. The Alaska United Gold Mining Company, Defendant. Filed Feb. 16th, 1901. W. J. Hills, Clerk. Verdict.

Afterwards on March 16th, 1901, the Court rendered its judgment as follows, to wit:

The United States of America, }
 District of Alaska. } ss.

*In the United States District Court, in and for the District of
 Alaska, Division No. 1.*

HENRY MUSET, as Administrator of
 the Estate of Edward Hegman, De-
 ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
 ING COMPANY (a Corporation),

Defendant.

Judgment.

This action came on regularly for trial. The said parties appeared by their attorneys, Crews & Hellenthal, counsel for plaintiff, and Malony & Cobb, counsel for the defendant. A jury of twelve persons was regularly impaneled and sworn to try said action. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of

counsel and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court, with the verdict signed by the foreman, and, being called answered to their names, and say: "We, the jury impaneled and sworn in the above-entitled cause find for the plaintiff in the sum of ten thousand dollars." Thereafter the plaintiff appeared in open court by his counsel and remitted the sum of seven thousand dollars of the ten thousand dollars to which the jury found the plaintiff entitled to, and offered to take judgment against the defendant for the sum of three thousand dollars. And the defendant's motion for a new trial herein having been heretofore overruled.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged and decreed that the said plaintiff have and recover from the said defendant the sum of three thousand dollars (\$3,000-00), with interest thereon at 8 per cent per annum, from the date hereof until paid, together with the plaintiff's costs and disbursements incurred in this action, amounting to the sum of seventy-three and eighty one hundredths dollars.

Done in open court this 16th day of March, A. D. 1901.

(Signed) M. C. BROWN,
Judge of the above-named court.

Afterwards the defendant filed its petition for writ of error, which is in words and figures as follows, to wit:

In the United States District Court for Alaska, Division No. 1 at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING CO.,

Defendant.

No. 23A.

Petition for and Order Allowing Writ of Error.

The above-named defendant, The Alaska United Gold Mining Co., conceiving itself aggrieved by the judgment in said cause, heretofore rendered on the 16th day of March, 1901, in favor of the plaintiff and against the defendant for the sum of \$3,000; besides costs and disbursements, which said judgment and the proceedings incident thereto are erroneous in many particulars, to the great injury and prejudice of your petitioner, the defendant in said suit; that manifest errors have been made in this

cause in the rendering of said judgment as fully appear from the bill of exceptions therein and the assignment of error filed herewith: Now, therefore, that your petitioner may obtain relief in the premises and an opportunity to show and have corrected the errors complained of, your petitioner prays that he be allowed a writ of error in said cause, and that upon the giving by your petitioner of a supersedeas bond, conditioned as by law required that a stay of said judgment be granted pending said writ of error, and that a transcript of the record and all papers in this case, duly authenticated, be transmitted to the Honorable The United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, for the determination of said writ of error.

Dated Juneau, Alaska, April 13th, 1901.

(Signed) ALASKA UNITED GOLD MINING CO.,
Petitioner.

MALONY & COBB,
Attorneys for Petitioner.

Order.

And, now, to wit, on April — ; 1901, it is ordered that the writ of error be allowed as prayed for; and that upon the defendant The Alaska United Gold Mining Co., executing a supersedeas bond, conditioned as required by law with sufficient sureties to be approved by this Court, that the execution of the judgment in said cause be stayed pending said writ of error.

(Signed) M. C. BROWN,
Judge.

[Endorsed]: No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, as Admr. of the Est. of E. Hegman, Dec'd, Plaintiff, vs. The Alaska United Gold Mining Co., Defendant. Petition for Writ of Error and Order of Allowance. Filed April 17th, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Deft.

And on the same day the defendant filed his writ of error, which is as follows, to wit:

In the United States District Court for Alaska, Division No. 1 at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING CO.,

Defendant.

No. 23A.

Writ of Error (Copy).

United States of America—ss.

The President of the United States, to the Judge of the United States District Court for Alaska, Division No. 1, at Juneau, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Henry Musset, as administrator of the estate of Edward Hegmen deceased plaintiff, and The Alaska United Gold Mining Co., defendant, a manifest error hath hapened, to the great damage of the Alaska United Gold Mining Co., as is said and appears by the complaint; we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said Court in the city of San Francisco, together with this writ, so that you have the same at the said place on the 10th day of June next, that the records and proceedings aforesaid being inspected, the said Justices of the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right, according to the law and custom of the United States ought to be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 15th day of April, in the year of our Lord, one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

[Seal] (Signed) W. J. HILLS,
Clerk of the United States District Court for Alaska, Division No. 1.

The foregoing writ is hereby allowed.

(Signed) M. C. BROWN,
Judge.

[Endorsed]: No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, Plaintiff, vs. Alaska United Gold Mining Co., Defendant. Writ of Error. Filed April 17, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant.

And on the same day the defendant filed his supersedeas bond, which is in words and figures as follows:

In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING Co.,

Defendant.

No. 23A.

Supersedeas Bond.

Know all men by these presents, that we, The Alaska United Gold Mining Co., a corporation, and B. M. Beh-

rends, and Emery Valentine, all of Juneau, District of Alaska, are held and firmly bound unto the above-named Henry Musset, as administrator of the estate of Edward Hegman, deceased, in the sum of five thousand dollars, to be paid to the said Edward Hegman, etc., for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 12th day of April, in the year of our Lord, one thousand nine hundred and one. Whereas, the above-named, the Alaska United Gold Mining Company, has prosecuted a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment rendered in the above-entitled action by the United States District Court for Alaska, Division No. 1.

Now, therefore, the condition of this obligation is such that if the above-named, The Alaska United Gold Mining Co., shall prosecute said writ of error to effect, and answer all damages and costs, if it fail to make the said writ of error good, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) ALASKA UNITED GOLD MINING
COMPANY.

By MALONY & COBB,
Its Attorneys of Record.
B. M. BEHRENS.
EMERY VALENTINE.

Signed and delivered, and taken and acknowledged this
12th day of April, 1901, before me.

[Seal]

HIRAM H. FOLSOM,
United States Commissioner.

Approved by:

M. C. BROWN,

Judge.

[Endorsed]: No. 23A. In the United States District
Court for Alaska, Division No. 1, at Juneau, Henry
Muset, as Administrator of the Estate of Edward Heg-
man, Deceased, vs. Alaska United Gold Mining Com-
pany, Defendant. Supersedeas Bond. Filed April 17,
1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for
Defendant.

Thereafter and on, to wit, the 7th day of May, 1901, plaintiff in error filed the following motion.

In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

ALASKA UNITED GOLD MINING
COMPANY,

Defendant.

No. 23A.

Motion to Set Aside Writ of Error, etc.

Now comes the defendant and moves the Court to set aside the order heretofore made on the 17th day of April, 1901, allowing a writ of error herein, and to grant the defendant leave to withdraw the petition for writ of error, writ of error, and supersedeas bond filed herein, and for cause shows that said petition, writ, and bond were improvidently filed (but the same were never served) and said order improvidently made, in that the bill of exceptions had not then been settled and filed with the Court, though said bill had been presented to the Court

for approval and filing; that no citation in error has been signed or issued; that the assignment of errors were not and could not be reduced to form and presented therewith until the bill of exceptions were finally settled, and for that reason were not presented therewith; that counsel inadvertantly overlooked the provision of rule two of the Circuit Court of Appeals forbidding this Court granting a writ of error unless assignments of error accompanied the petition for same; that in order to present the questions of law reserved on the trial and embodied in the bill of exceptions clearly to the Appellate Court it is necessary and proper to present a new petition, writ, and bond, accompanied by the proper assignment of errors, as soon as the bill of exceptions is settled and allowed.

MALONY & COBB,

Attorneys for Alaska United Gold Mining Company.

[Endorsed]: Original. No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, Plaintiff, vs. Alaska United Gold Mining Company, Defendant. Motion to Set Aside Writ of Error and to Withdraw Papers. Filed May 7, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant.

Thereafter, and on the same day, comes the attorneys for the plaintiff and files the following written objection to the foregoing motion and to the allowance and settlement of the bill of exceptions:

United States of America, }
District of Alaska. } ss.

*In the United States District Court for the District of Alaska,
Division No. 1.*

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING COMPANY (a Corporation),

Defendant.

Exceptions to Withdrawal of Writ of Error, etc.

Comes now the above-named plaintiff and objects to the granting by this Court of leave to the defendant to withdraw the petition, writ of error, and supersedeas bond filed herein, and also objects to the signing and filing of any bill of exceptions in this cause, for the following reasons: 1. The Court has no jurisdiction or power to withdraw or amend the writ of error issued in this cause; 2. Because the judgment in the above-entitled cause was

rendered and entered in this Court during the December term of this Court, which said term ended on the 30th day of March, 1901; that no bill of exceptions were signed, settled, or filed during the said term; that upon the entry of judgment in this cause, to wit, on the 16th day of March, 1901, defendant petitioned this Court, and the Court granted over plaintiff's objection to the defendant, forty days thereafter within which time to present and file his bill of exceptions; that defendant failed and neglected either during said term, or during the time so granted, to settle and file his bill of exceptions herein, nor has he done so at this time though a subsequent term of court, to wit, the April term, has also expired and no bill of exceptions yet been settled and filed in this court; that no further extension of time has ever been applied for or granted; 3. Because the said defendant did on the 17th day of April, 1901, regularly sue out and serve and file in this cause its writ of error, as well as its petition therefor and supersedeas bond, thus taking the case beyond the jurisdiction of this Court.

CREWS & HELLENTHAL,

Attorneys for Plaintiff.

[Endorsed]: In the United States District Court for the District of Alaska, Division No. 1. Henry Muset, as Administrator, etc., Plaintiff, vs. Alaska United Gold Mining Company, Defendant. Exceptions to Withdrawing Writ of Error etc., and signing Bill of Exceptions. Filed May 7, 1901. W. J. Hills, Clerk. Crews & Hellenenthal, Attorneys for Plaintiff.

In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

ALASKA UNITED GOLD MINING
CO.,

Defendant.

No. 23A.

Bill of Exceptions.

Be it remembered that on February 14th, 1901, the above-entitled and numbered cause coming on to be *tried to a jury*, the following proceedings were had, to wit:

A jury having been selected, impaneled, and sworn, and counsel for plaintiff and defendant having made their statement of the case, respectively, the plaintiff, HENRY MUSET, to maintain the issues on his part, was sworn as a witness in his own behalf and testified as follows:

I am the plaintiff. Am thirty years of age. Have been working in the mines; been a miner ever since I was

a kid, about fourteen years old. I was acquainted with Edward Hegman, had known him between twelve and thirteen years. During his lifetime he and I had been partners several times.

Question by counsel for plaintiff: "What relation, Mr. Muset, do you sustain to the estate of Edward Hegman?"

(Counsel for defendant objected to the above question because not the best evidence.)

Answer: "I am his administrator."

By the COURT: "This declaration will not be allowed to stand unless they prove it by the records."

(Continuing witness further testified): "Edward is dead. He was killed on the 9th day of last October at the Seven Hundred Mine, on Douglas Island. I was working with him at the time, and was with him on that occasion. I believe there were about thirty or forty men employed on a shift at the Seven Hundred Mine at that time. There is a stamp-mill in connection with the mine and a tramway. There is about a hundred stamps. The mine known as 'The Seven Hundred' furnished ore to the mill. No other mine furnished ore to it. The Seven Hundred Mine is all under one management."

Question by plaintiff's counsel: "Now, state, if you will, if you know, how the men, the men or the employees, were arranged or graded that are employed in that mine. State to the jury how they are—"

Answer: "Well, there's some men working in the 'glory hole' and some underground in the stopes, and some

in the shafts, and in the blacksmith shop, and hoist, and in the tramway.”

Question: “How are those parties that work in the various departments arranged as to whether or not they have foreman?”

Answer: “Well, they generally got a man looking after each gang. He is called shop-boss, or shift-boss, or pit-boss, or so. Those working in the shops or working in the mines, are working under bosses. There’s a general foreman or supervisor of all those forces. His name on that occasion was H. B. Pope. Mr. Pope was the man that directs everybody, and told them what to do, and ruled the whole thing, and sent a gang there, and another here, or so. He both employed and discharged men. He gave the men their time checks. I and the deceased, Edward Hegman, were working in the shaft on the 9th day of last October. Jim Pianfetti was with us; he was boss of the shaft and was called shaft-boss. Well, on the 9th day of last October, we went down, the same as usual, in the morning. The night shift blasted some holes and cleaned up the dirt and we found four missed holes from the night shift. We cleaned them out and put new primers into them, and loaded six more and was going to blast them. While we had about two holes to load, I told Ed, I says to him, ‘You better go up and tell’—I went up after the iron and went up to the two-sixty level; and I met Pope at the two-sixty level; he came off the skip just as I came on and he asked me, ‘Where are you going?’ and so I says, ‘We are going to blast,’ or, that is, he asked me if we were going to blast

and I said yes. I then took the skip and went to the surface, and I was going to have the five bells, from the bottom of the shaft as soon as I went down with the iron, and I was going to have the five bells from the two-sixty level, and because the boys did not have the primers in yet I was to wait. That signal of five bells was to indicate that we were ready to blast, and when I was up there in the blacksmith shop, I stood in the blacksmith shop and asked the blacksmith if the iron was ready and he said yes. So I went into the shaft-house to get the five bells and Mr. Pope came up and told me to take the iron down, the boss was waiting for me. I then went to the blacksmith shop, and got the iron, and then went to the two-sixty level. I then went on the skip, and went on the bucket and asked to be lowered down, and when I came down there I turned around and rang the five bells to the engineer. I rang the five bells for the signal that we were ready to blast. The engineer moved the bucket about three or four feet from the bottom of the shaft and dropped it down again, and that was his signal that he was there and knew what he was doing. Well, Ed cut the fuses and I lighted them with the iron, and threw the iron again to one side, and we jumped on the bucket, and rung one bell to the top; that was for to hoist up; and he raised us a little, and we came back again, and he hollered down that he didn't have a pound of air, and to save ourselves. Jim was standing on the bucket all the time while we was lighting the fuses, and he had the candle, and so when he was told that he didn't have any air we jumped off the bucket again. Well,

Jim dropped the candlesticks, and then we were in the dark, and the only way we had to get out was to get up that cable—it's a quarter-inch cable, steel cable—and I felt around, and of course I could not tell whether Ed was before me or after me, I didn't have any idea, because we was in the dark; anyway I got hold of the rope, and began to climb the pole. I climbed to the skip chute, and swung myself in the timbers, and then Jim began to holler to me and call for help, and I put my hand out and helped him off the timber, and I asked for Ed, and Ed began to holler and tell me to help him. I couldn't do anything. I stood there trying to do something and to tell him to climb the rope, and he was climbing and hollering for help. I couldn't go down the rope, and pack a man up heavier than me. Well, we stayed till the blast went off, and couldn't get hold of the skip. We told the men to ring for the skip, so we had to wait till the blast went off, and finally the skip came down and went from that level to the surface to see what was the matter. I don't know, except from what Nels told me, why there was no air. At the time I went down with the hot iron I examined to see if there was air, and there was then between sixty or sixty-five pounds of air. Ed Hegman was hollering and crying for help. Of course, he was in the dark and couldn't see. When we were first advised that there was no air, Hegman hollered to me that he would try to pull the fuses. I had known Hegman thirteen years. We met first in Michigan, and worked in a mine together there, and out on the railroad, and I went to

Alaska and he came after. We were working together on Douglas Island for a while, and he went away to Unga Island and stopped there a while. He and I were together most of the time and were partners."

Question: "Did he have a mother, sister, or brother living?"

Answer: "They were home, and he told me he had a sister living in this country."

On cross-examination, the witness further testified as follows: "I started to work for The Alaska United Company there the last part of September. Mr. Pope was there then. I've no idea who was superintendent of the mine. No man showed me anything only Pope, or gave me any orders whatever. They told me Mr. Weck was superintendent, but I didn't know it. Mr. Pope was telling me what to do and where to work. He simply directed me in the mine. I have no idea who directed him. I don't know what his relations were to the company except what information I got from others. He hired me. So far as I know there might have been two or three superior officers over him. Hegman and myself shared our profits, earning and expenses. I was not under a contract to share expenses and profits with him—just helped each other. Our business was just mining, working on the railroad and so on. I mean we shared our wages in common and was a partner in that respect. The idea is, that if I was out of work and he was in, I would be helped out by him, and if he was out and I was in, I would help him. We never had any business part-

nership. As a matter of fact, we were both just laboring men. Hegman had worked a whole lot in the mines. He knew all about the risks and dangers attending that sort of work. I couldn't answer for him as to whether he knew the proper steps to take to avoid danger. I had an idea as to how to avoid danger and he had long experience in mines same as I had."

On redirect examination, the witness testified: "During the whole time I was there I never saw any other person but Pope, exercising any supervision, or directing the labors of the gang in the mine, in the tramway, or in any other part of that branch of the company's work."

And to further maintain the issues on his part, the plaintiff next had sworn in his behalf the witness, NELS OLIN, who testified as follows:

"I am acquainted with Henry Musset, the plaintiff. I was acquainted with Edward Hegman in his lifetime. On the 9th day of October, 1900, I was running a hoist at the Seven Hundred Mine, on the third level. I was running that hoist on the 260 level at the time of the accident wherein Edward Hegman lost his life. I am acquainted with H. B. Pope. He was foreman of the mine. No other person, as far as I know, other than H. B. Pope, directed the labor, or acted as foreman of that department of the company's work. I remember the occasion of the accident. We went down to work at seven o'clock in the morning, to shovel off the rock of the other shift—they came down the hoist, and there were five or six buckets of dirt to take off, and some missed holes,

and they commenced to take the bucket down and blast them over again. About eleven o'clock Muset came up for the hot iron and told me that he was ready to blast, and Pope came down in the mine at the same time Muset went up. He asked Muset where he was going, and he said he was going on top for the hot iron. He was there for a while and he rung the five bells in the shaft for the blast. They rung the five bells, and then I had to ring to the surface, but Pope says, 'Never mind; I will go up and tell him.' He went up and Muset came up with the hot iron, and see that the pressure was sixty or sixty-five pounds, and he rung the five bells as fast as he came down, and I lifted the bucket and let it down again, as I always did. I got the signal for the five bells; that is a signal for ready to blast. I then lifted the bucket four or five feet and let it down again. That meant that I was ready to hoist them—that everything was all right. Then he rung one bell, and I hoisted them three or four feet, and see that the air was a failure and let them down again, and then I went up there and told them that the air was gone, and then I didn't see any more of him before he came up, because he was left in the dark down in the shaft. The blast exploded. The next men I see came off the skip chute was Henry Muset and then Jim. And Hegman didn't come out. The men employed in the mine were working in different groups. There was a pit and two stopes, and then a shaft and blacksmith shop and hoist, and tramway—four gangs. Well, some was working in the stopes, drilling, some was

blasting, and some breaking rock, and they had a shift-boss over them to look what they were doing.”

Question: “I’ll ask you to state to the jury, if you know, whether or not there was a general foreman or superintendent over them.”

Answer: “Yes, sir.”

Question: “Who was that?”

Answer: “Mr. Pope was the foreman.”

Question: “H. B. Pope?”

Answer: “Yes, sir.”

On cross-examination, the said witness further testified as follows: “Mr. Weck was superintendent. Mr. Pope was foreman of the Seven Hundred Mine. There were other mines operated by that company, the Treadwell, Mexican, and Ready Bullion.”

Question: “By the Alaska United Co.?”

Answer: “The Ready Bullion.”

Question: “There was a foreman too, wasn’t there?”

Answer: “Yes, sir. Mr. Weck, though, was the general superintendent, so I was told.”

And to further maintain the issues on his part, the plaintiff produced and had sworn as a witness, GUY FALCONER, who testified as follows:

“I reside on Douglas Island, and am seventeen years old. On the 9th day of last October I was employed in the Seven Hundred Mine, and was so employed at the time the explosion, that resulted in this case, took place. I was helping Mr. Pope part of the day. He was the foreman of the Seven Hundred Mine. As such foreman, his

duties were to advise the men, show what they were to do, and tell them where to work. The Seven Hundred Mine is a part of the Treadwell department from the Treadwell. It furnishes all the ore for the Hundred Stamp-Mill. That mine was under Mr. Pope's supervision at that time. I saw him that day. The explosion took place about eleven o'clock in the morning. The air at the Seven Hundred Foot Mine was disconnected about that time. About a quarter of eleven Mr. Pope came to me and told me to get the ladder, and I went and got the ladder and he put it against the pipe, and he climbed up and shut the air off. I was standing below holding the ladder for him. He told me to get the wrench so he could uncouple the pipe and I got the wrench, and he and Hoyt unscrewed the pipe, and he went out. That was just a few minutes before the explosion. I seen Henry Muset just before that. He came up for the iron, and I seen him go down with it. The pipe I speak of seeing them disconnect or unscrew was the pipe that furnished air and power for the shaft in which Henry Muset and Ed. Hegman were working."

On cross-examination, the witness further testified as follows: "My age is seventeen. I worked in the mill there about two and a half months. At that time I had been at work about two months. I worked half a month afterwards. Then I quit. A fellow let a bucket down on me a couple of times and I wouldn't work there. Mr. Muset did not ask me to quit. I know that Mr. Pope had supervision of that property, because he instructed the

men, and hired them and discharged them, too. I am sure he hired and discharged them."

Question: "As a matter of fact, he merely, when he got through with a man, sent him to the office?"

Answer: "He gave him papers to the people up there to get his time with."

Question: "That was to show how long he had worked?"

Answer: "Yes, and went to the office and got his time from Mr. Weck."

Question: "He went and took the paper to the office, and they paid him there—is that it?"

Answer: "There's where he got his discharge, or his money, or whatever it is."

Question: "There's where he got his discharge? Don't you know, as a matter of fact, that Mr. Weck was superintendent of that mine?"

Answer: "Yes, sir."

Question: "And that he had supervision of it and not Mr. Pope—isn't that right?"

Answer: "Mr. Pope did all the hiring and discharging."

Question: "Answer my question. Didn't Mr. Weck have supervision of it over Mr. Pope?"

Answer: "Yes, sir."

Question: "Mr. Pope was simply in charge of these men in this particular place—isn't that right?"

Answer: "Yes, sir."

Question: "Now, who hired you?"

Answer: "Mr. Pope."

Question: "And you went to the office to see that the

hiring was approved by Mr. Weck, didn't you, before you went to work?"

Answer: "Before I went to work?"

Question: "Yes, the first thing you did he gave you a piece of paper?"

Answer: "Yes, he gave me a piece of paper and I went down—"

Question: "And it was handed to the general superintendent, wasn't it?"

Answer: "Yes, sir."

Question: "Yes, before you went to work. How came you to say that Mr. Pope had supervision of the mine and the mill, were you instructed to say that?"

Answer: "No, sir."

Question: "It's a fact, however, that Mr. Weck, and not Mr. Pope, had general supervision of it?"

Answer: "I don't know."

Question: "You don't know—if you don't know, why did you say that Mr. Pope had general supervision?"

Answer: "Because I thought he did all the hiring and discharging and was the boss around there."

Question: "That is, right in the mine. And even when he hired anyone, they had to be approved at the office?"

Answer: "All they had to do was to go down and get a check for the boarding house."

Question: "And now you say you don't know whether Mr. Pope or Mr. Weck had charge?"

Answer: "I know that Mr. Pope had charge around the mine. I don't know who had charge of the whole prop-

erty. I was present at the time the air was shut off—was right there, helping Mr. Pope, holding the ladder so it wouldn't fall down. Mr. Pope went up to shut off the air; that's all he done. That is the work he was engaged in at the time. I am sure I was present. My employment in general was a little of everything, packing powder, packing drills, helping the blacksmith, helping run out ore, and clearing up the skips. I was to do anything at all I was put to. I am acquainted with Mr. Tatum. I know where he was at that time. He was in the hoist. The hoist was on the Seven Hundred foot claim, about forty feet from me and Mr. Pope. I don't know whether he could see me and Mr. Pope or not; it would be according to where he was standing. If he was standing behind the drums he couldn't see. If he was standing out to one side he could see. I saw Mr. Tatum every once in a while about that time. He could see me, and I could see him whenever he was not behind the drum. I didn't notice him right when Mr. Pope shut the air off. I wasn't watching him; I was holding the ladder and was watching what I was doing myself. I don't know whether he was looking at Pope and me or not."

On redirect examination, the witness testified as follows: "I worked in the blacksmith shop and carried tools and powder and drills. Mr. Pope had charge of the blacksmith shop, of the hoist, of the men working the elevator, and of the miners and the direction of them. When on cross-examination I said Mr. Pope had charge

of the work right there, I meant the Seven Hundred Mine and the entire mine. Mr. Pope did not work generally in any department around that mine.”

And to further maintain the issue on his part, the plaintiff called as a witness, THOS. TATUM, who being first duly sworn, testified as follows:

“I am employed on the hoisting engine at the Seven Hundred Mine, and was so employed on the 9th day of last October. I remember the explosion in question here. I saw Mr. Pope there. Mr. Pope was the foreman of the Seven Hundred Mine at that time. As such, his duties, as I understood it, was to superintend the mine generally under the directions of the superintendent.”

Question: “He had the general superintendency of the operations of that mine, though?”

Answer: “Yes, sir.”

Question: “As such he was your superior, did he direct you?”

Answer: “Yes, sir.”

On cross-examination, the witness further testified as follows: “At the time of the accident I was in charge of the hoist. I could see Mr. Pope; I was out on one side and seen him cut the air off. Mr. Pope turned off the air that afforded power to the Seven Hundred shaft on that day. There was with him Mr. Hoyt and Mr. Hoyt’s helper. I have forgotten his name. I didn’t notice Mr. Falconer. I did not see him there. I presume he was around the mine some place—he was generally employed around different places. I didn’t see him at work with

Mr. Pope cutting off the air. If he had been there, I could have seen him. Mr. Pope was foreman in the mine under Mr. Weck—that's the way I understood it; yes, sir. I know that Mr. Weck was superintendent of the mine and had entire charge and control of it. Mr. Pope was simply a foreman in this particular mine. The Alaska United Company is also operating the Ready Bullion, as I understand it. Mr. Pope was not foreman at that mine. He wasn't foreman of the general business of the Alaska United Company either. He wasn't foreman of the mill. There was another foreman in charge of that, the same as Pope was in charge of this particular mine. The master mechanic had charge of the mechanical part, of course."

Question: "And the master mechanic had general charge of the machinery, as well as of the pipes?"

Answer: "No, sir; I don't think he has anything to do with the piping unless he was called on from the shopmen for that purpose."

Question: "The pipes, and the pressure furnished, the compressed air, was under the supervision of the master mechanic, who was also a foreman in your department?"

Answer: "I really can't say about that. The man they hire, however, is generally competent to do that kind of work around the mine."

On redirect examination, the witness further testified as follows: "So far as I knew, for the various departments in running that mine, they employ such men as are usually competent for the positions they occupy. The

men employed in the various departments of the Seven Hundred Mine, such as blacksmiths, engineers, miners, and drill men, were under Mr. Pope's immediate supervision, as I understood it."

On recross-examination, witness stated that Mr. Pope was under Mr. Weck, as he understood it.

On redirect examination, witness stated that Mr. Weck had general supervision—that is, was the general superintendent of this mine and mill, as well as the Ready Bullion Mine and Mill, and had general supervision over all of them.

And to further maintain the issues on his part, the plaintiff, HENRY MUSEY, being recalled, testified as follows:

"On the 9th day of last October I was down at the mine at the time of the explosion. The last time I saw Edward Hegman alive was when he stepped on the bucket. The next time I saw him was when I went down in the shaft after him. He was then dead—blasted to pieces. I removed the corpse from the shaft. He was killed by that explosion. He was about thirty years of age, and a big, strong man—about one hundred and eighty pounds' weight, and healthy; I never knew him to be sick."

On cross-examination, the witness testified as follows, counsel, by permission of the Court, examining him regarding his testimony when first on the stand:

Question: Mr. Muset, you stated yesterday that you didn't know whether Mr. Weck was superintendent or not? A. Yes, sir.

Q. Now, isn't it a matter of fact that some time in September you applied to him as superintendent of the Alaska United Gold Mining Company to get a contract to sink this identical shaft as an independent contractor?

A. No, sir; that isn't a fact. I put in a contract and gave it into the hands of Pope.

Q. Isn't it a fact that Mr. Weck posted a notice there and signed it as superintendent of the Alaska United Company, calling for bids for the sinking of this shaft?

A. I don't remember of reading that notice whatever.

Q. You don't remember of reading the notice?

A. No, sir.

Q. Didn't you afterward come to him and have an interview with him in regard to the sinking of that shaft?

A. Yes, sir.

Q. And you went to him as superintendent, to let the work if it was to let?

A. I went to see him, yes, sir, and—

Q. Answer my question. A. Well?

Q. Didn't you go to him as superintendent of the mine to get that contract?

A. I can't tell you whether he was superintendent or not. I went to him to get the chance.

Q. Didn't you go to him as superintendent?

A. No, sir, I didn't.

Q. Then how came you to go to him at all?

A. I was told that he was the man that had charge of that mine.

Q. And you went to him as the man in charge of it, didn't you? A. Yes, sir.

Q. And you knew he had charge of it, didn't you?

A. Only what people told me about it.

Q. And you put in a bid for that work, didn't you?

A. Yes, sir.

Q. And didn't Mr. Weck—didn't you afterward, after you put in your bid, go to Mr. Weck and inquire as to whether you were going to get that contract or not?

A. Yes, sir.

Q. And he told you the bids were too high, and he was going to have it sunk by pay by the day?

A. Yes, sir.

Q. And then you were employed by him to sink that shaft, were you not? A. No, sir.

Q. About what time was that—what month, if you know? A. In September, sometime.

Q. Just before you began work on that shaft?

A. Yes, sir.

Q. And you were hired to work on that by Mr. Weck?

A. No, sir.

Q. Your wages were increased fifty cents a day while you were working in the shaft? A. Yes, sir.

Q. Who did that? A. Pope did.

Q. He did—or did Mr. Weck?

A. I never seen Mr. Weck. When I went to work I got a slip of paper from Mr. Hoyt and went to the office, and he gave me a note to the boarding house.

Q. That was immediately before you went to work?

A. Yes, sir.

On redirect examination, the witness testified as fol-

lows: "I never saw Mr. Week about that shaft there in my life. Not as long as I was around there. He never gave any directions around there. I stated that people told me Mr. Week was superintendent of that mine. That included other mines, the Ready Bullion as well. Mr. Corbus, as I understood it, was superintendent over the Treadwell mine."

And to further maintain the issues on his part, the plaintiff next called as a witness, J. J. C. BARBER, who, being sworn, testified as follows:

"Am postmaster at Juneau. Before that was general agent for the New York Life Insurance Company up here. Have been in the life insurance business eleven years, and am familiar with the rules and regulations of life insurance business. They have a table called the mortality table. I have it here; this is one of the tables of mortality with the death rate per thousand, and the expectation of life. The expectancy of life is the average life a large number of persons have yet to live—that is, the average number of years they have yet to live. From these tables a man with good health, thirty years of age, has a life expectancy of 35.33 years. (The following portion of the tables mentioned by witness was then read: Age, 30; number living, 85,441; deaths each year, 720; death rate per 1,000, 843; expectation of life, 35.33.)"

On cross-examination, the witness testified as follows:

Q. Mr. Barber under the rules of life insurance companies, does the occupation or calling in life of the person make any difference as to the life expectancy or the risk assumed?

A. The only way I could answer that, Mr. Cobb, is this: With the New York Insurance Company we don't make any higher charge, no matter what business he is in. The rate is the same for a miner in Treadwell as for a banker or clerk, the same rate exactly. One or two companies make an excessive rate on miners generally. That is considered an extra hazardous employment with other companies, I suppose. The New York Life Insurance Company does not make the same rate in miners as in others as a matter of advertisement; it figures on the whole proposition, and they figure they can take the miners at the regular rates, the same as they do anybody else. But some of the companies make an extra rate, regarding that employment as extra hazardous. I have not especially any tables showing the life expectation of a miner engaged as this man was. I understand that this table covers all classes and conditions—and this is the only table I have. I couldn't say from this table, if this was an extra hazardous occupation, what the life expectancy would be; only, as I understand it, the American tables of mortality is the experience of different insurance companies from a hundred and fifty to two hundred years, from all the life insurance written in the world has taught, and when they take a certain class of men in a hazardous occupation, whether that lowers the rate, I don't know; but this goes back two hundred years, and covers all kinds of cases. The New York Life Insurance Company will insure a miner for any amount without any restrictions whatever. I don't know about other companies.

On redirect examination, the witness testified as follows: "All insurance companies base their insurance on that table."

And to further maintain the issues on his part, the plaintiff, HENRY MUSSET, was again recalled and testified as follows: "Hegman, at the time of his death, was getting three dollars a day and his board."

On cross-examination, the witness further testified as follows: "He was getting extra wages at that time because of the nature of the work he was engaged in. I don't know what were his savings from his daily or monthly earnings. He was drinking once in a while. He went in a saloon and went out."

Q. He used to frequently get drunk, didn't he?

A. I don't know if I have ever seen him drunk—that is, that he didn't know what he was doing or so—that is, I never seen him disorderly.

Q. Didn't you see him drink?

A. Well, I didn't see him drunk; that is, drunk that he would do anything out of the way; he was always behaving himself.

Q. He didn't misbehave himself, then, when he got drunk?

A. Yes, he behaved himself. Went out and in a saloon, and didn't bother anybody.

Q. But answer the question, as to whether you didn't see him drunk?

A. Well, how is a man when he's drunk; what do you mean by drunk?

Q. I mean drunk. You don't mean to tell this jury that you don't know what drunk means?

A. Yes; I know what drunk means.

Q. Did you ever see Hegman drunk?

A. Well, let me explain what I mean by drunk.

Q. Answer my question first, and then explain.

A. Yes, I have seen him drunk.

Q. And he drank often, didn't he?

A. When he got a partner, I suppose; he would generally go in a saloon and go out again all right.

Q. Did he spend whole evenings frequently, drinking and carousing; lots of evenings for hours in a saloon, drinking?

A. He might for all I know; I haven't been with him all the time.

Q. Haven't you seen him when you were with him?

A. Yes, sir.

Q. And stayed in a saloon for hours that way?

A. Yes, once in a while, I guess.

Q. Blowing his money and drinking? A. Sure.

Q. And he would do that pretty frequently, wouldn't he?

A. It was whole weeks that we wasn't together at all in a saloon.

Q. Then there would be weeks you would be there most of the time, wouldn't there?

A. Well, you might say he lived in a saloon—it was a hotel; and we would sit in the barroom together.

Q. And would be there all the time for weeks at a time, wouldn't you?

A. Just live in the hotel there, and sit in the barroom.

Q. (By the COURT.) Mr. MUsET, you stated yesterday that yourself and the dead man had been partners a number of years?

A. Yes, sir.

Q. Do you wish to be understood as saying, then, that being a partner of his and dividing his earnings, that you don't know anything about what he saved from his labor from day to day?

A. Well, you know, I never had—he never showed his letters, and only what I can say he told me. I have no source to find out.

Q. I'm not asking you that; you was asked what, if anything, this man saved from his daily earnings. If you was his partner and shared with him in your own wages and his, you know what he saved, don't you?

A. What was the question?

Q. Do you know what this man saved from his daily earnings?

A. Not exactly the amount; I couldn't say. All I have to say for that is his word, what he told me he done with his money, this and that, and what he got on pay-day. That's the only answer I can give on that. His papers and letters and anything what he would send away I might have found, but I never found any papers.

Q. Did he divide anything with you—any portion of his daily or monthly earnings?

A. Yes, I have got money from him, when I didn't have it.

Q. Well, what do you mean by this partnership—what kind of a partnership?

A. Well, acquainted, and traveling together, and had known each other for a long time; and when one was out of money the other would loan him, and so on.

Q. And if the other was out of money, that one who had the money would loan it—is that all you mean by partnership?

A. Yes, sir, we had both been together, just working for our living.

Q. And were friends, and accommodated each other with loans—is that the substance of it?

A. Yes, sir, the whole substance.

On redirect examination, the witness testified further as follows: "Hegman and I did not go to the Yukon over the same trail. He came in by St. Michael's and I came over the Pass. Mr. Hegman did not lose any work by reason of his drinking that I knew of. I never saw him drunk while on duty. His sitting in the hotel as I have stated was not due to intoxication."

On recross-examination, the witness testifies as follows:

Q. You stated a moment ago that he sometimes spent a week at a time around the saloons, didn't you?

A. Well, that was going out and coming in the saloon I would see.

Q. Wouldn't he be on a spree there, and stay there the whole time and be in and out, for weeks at a time?

A. Well, if he hadn't work—

Q. Answer my question.

A. Yes, I have seen him for weeks around that saloon.

Q. Staying there drinking?

A. I don't know that; he was just sitting about the bar.

Q. Would he be at work when he was on these sprees of drinking for weeks at a time?

A. When he was working, I didn't see him in a saloon. He was at work every day.

Q. When you saw him in a saloon was he at work?

A. No, he was not.

On redirect examination, the witness testified as follows:

Q. Mr. Musset, how long have you ever seen Hegman on a spree, if at any time—if you ever saw him on a spree?

A. I haven't seen him on what I call a spree.

Q. When he was in a saloon there, what kind of a saloon was that?

A. I haven't seen him in a saloon; have seen him sitting around from one place to another, and sometime live in a hotel and saloon, sitting in the barroom.

Q. Living in the hotel there?

A. Yes, sir, sitting in the hotel.

Q. Was the saloon then in connection with the hotel?

A. Yes, in the same house.

Q. Was that the reason he was there?

A. Well, he used to hang around the barroom there most of the time, sitting in the bar.

Q. Would Mr. Hegman get intoxicated or drunk at the time? A. I never seen him what I call drunk.

Q. He took a drink once in a while? A. Yes, sir.

Q. (By the COURT.) Now, Mr. Musset, you may explain what you call drunk.

A. I call it drunk when a man don't know what he's about.

Q. Before he's drunk he must have so much whisky in him as to make him unable to understand what he's doing?

A. When I see a man on the street that can't handle himself, I know he's drunk. But if I see a man that walks the street and minds his business, I can't call him drunk. That's my idea. And I have never seen him drunk under that definition of the term.

And to further maintain the issues on his part, the plaintiff next offered in evidence certified copies of the following papers, to wit:

1st. Petition for letters of administration upon the estate of Edward Hegman, deceased.

2d. Order appointing administrator.

3d. Oath of administration.

4th. Letters of administration.

5th. Bond of administration.

To which evidence the defendant objected because said documents showed that the petition was subscribed and filed on the 21st day of November, 1900; that the order granting same was made on the same day, showing that it was impossible for notice or process to have issued so as to give the Court jurisdiction, consequently the whole proceeding is void.

But the Court overruled said objection and permitted said papers to be read to the jury, to which ruling of the Court the defendant then and there objected.

Said papers were as follows:

Plaintiff's Exhibit "A."

In the Probate Court at Douglas, District of Alaska.

In the Matter of the Estate of ED- }
WARD HEGMAN, Deceased. }

Petition for Appointment of Administrator.

To the Honorable Judge of the said Court:

Your petitioner respectfully shows:

1. That he is a resident of Douglas Island, in the District of Alaska, more than twenty-one years of age, and one of the principal creditors of Edward Hegman, deceased.

2. That said deceased at the time of his death was a resident of Douglas Island, in the District of Alaska.

3. That the said deceased died intestate, at said Douglas Island, in the District of Alaska, on the 9th day of October, 1900, by being killed in the mines of the Alaska United Gold Mining Company, and the only estate left by the deceased consists of a right of action inuring to his administrator and personal representatives for his death.

4. That the said deceased had no relatives, heirs, or next of kin residing in the District of Alaska.

5. That the said deceased at the time of his death was indebted to several persons in the District of Alaska, but principally to your petitioner, and as such principal creditor and as the time has fully expired for those having precedence in the matter of the administration of

the deceased's estate, your petitioner is advised and believes is entitled to letters of administration of said estate. That due search has been made to ascertain if deceased left any will and testament, but none had been found.

Your petitioner prays that letters of administration of the said estate of the said deceased issue to this petitioner as provided by law.

(Signed) HENRY MUSETH.

United States of America, }
 District of Alaska. } ss.

Henry *Museth*, being first duly sworn, upon his oath says: I have read the foregoing petition and know the contents thereof, and the same is true.

HENRY MUSETH.

Subscribed and sworn to before me this 21st day of November, 1900.

[L. S.]

L. R. GILLETTE,

United States Commissioner and Notary Public.

[Endorsed as follows]: In the United States Commissioner's Court at Douglas. In Probate. In the Matter of the Estate of Edward Hegman, Deceased. Petition for Appointment of Administrator. Filed November 21st, 1900. L. R. Gillette, Com'r, etc.

United States of America, }
District of Alaska. } ss.

Henry Museth, being first duly sworn, upon his oath says: I have read the foregoing petition and know the contents thereof and the same is true.

HENRY MUSETH.

Subscribed and sworn to before me this 21st day of November, 1900.

[L. S.]

L. R. GILLETTE,

United States Commissioner and Notary Public.

In the Probate Court at Douglas, District of Alaska.

In the Matter of the Estate of ED- }
WARD HEGMAN, Deceased. }

Order Appointing Administrator.

This matter now coming on for hearing on this 21st day of November, A. D. 1900, upon the petition of Henry Museth, principal creditor of the deceased, for letters of administration upon said estate, and the Court having heard the proof in support of said petition, and being now fully advised in the premises, doth find all of the allegations of the petitioner to be true, and as a conclusion of law finds that said petitioner is entitled to letters of administration upon said estate.

Wherefore, it is considered, ordered, and adjudged that Henry Museth be, and he is hereby, appointed ad-

administrator of the estate of Edward Hegman, deceased, and it is further ordered that upon takinge the oath of office and filing a bond as provided by law in the sum of one hundred dollars, that letters of administration upon the estate of Edward Hegman, deceased, issue to said Henry Museth, as administrator.

Dated November 21st, 1900.

[L. S.]

L. R. GILLETTE,
Probate Judge.

Filed November 21st, 1900.

In the Probate Court at Douglas, District of Alaska.

In the Matter of the Estate of ED- }
WARD HEGMAN, Deceased. }

1 Oath of Administrator.

United States of America, }
District of Alaska. } ss.

Henry Museth, being first duly sworn, upon his oath says: I am a resident of Douglas Island, in said District of Alaska, and more than twenty-one years of age. I will support the Constitution of the United States and the laws thereof and the laws of Alaska, and will perform the duties of the trust imposed upon me by reason of my appointment as administrator of the estate of Edward Hegman, deceased, faithfully and according to law.

(Signed) HENRY MUSETH.

Subscribed and sworn to before me this 21st day of November, 1900.

1

L. R. GILLETTE,

United States Commissioner and Notary Public.

Filed Nov. 21st, 1900.

United States of America, }
District of Alaska. } ss.

In the Probate Court at Douglas, District of Alaska.

In the Matter of the Estate of ED-
WARD HEGMAN, Deceased.

Bond of Administration.

Know all men by these presents, that I, Henry Museth, as principal, and M. J. O'Connor, as surety, are held and firmly bound unto the United States of America for the use and benefit of the heirs and creditors of Edward Hegman, deceased, in the sum of one hundred dollars, for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors, administrators, firmly by these presents.

The condition of the above obligation is such that whereas the said above-bounden principal has been appointed administrator of the estate of Edward Hegman, deceased, now, therefore, if he shall faithfully perform the duties of his trust as such administrator, according

to law, then this obligation to be void, otherwise to be of full force and effect.

Dated this 21st day of November, 1900.

(Signed) HENRY MUSETH.

(M. J. O'CONNOR.

The above bond and surety thereof approved this 21st day of Nov., 1900.

L. R. GILLETTE,

United States Commissioner and Probate Judge.

United States of America, }
District of Alaska. } ss.

M. J. O'Connor, being first duly sworn, upon his oath says: I am the surety above named and I am worth the sum of one hundred dollars over and above my just debts and liabilities in property, exclusive of property exempt from execution.

(Signed) M. J. O'CONNOR.

Subscribed and sworn to before me this 21st day of November, 1900.

[L. S.]

L. R. GILLETTE,

United States Commissioner and Notary Public.

Filed Nov. 21st, 1900.

In the Probate Court at Douglas, District of Alaska.

In the Matter of the Estate of ED- }
WARD HEGMAN, Deceased. }

Letters of Administration.

To All Whom These Presents Shall Come Greeting:

Know ye, that it appearing to the undersigned, United States Commissioner at Douglas, Alaska, and ex-officio Judge of the Probate Court thereat, that Edward Hegman died intestate, leaving at the time of his death property in this District, I have duly appointed Henry Museth, administrator of the estate of said Edward Hegman; this, therefore, authorizes the said Henry Museth to act as administrator of the estate of Edward Hegman, deceased, according to law.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 21st day of November, A. D. 1901.

[L. S.]

L. R. GILLETTE,

United States Commissioner and ex-officio Judge of the
Probate Court at Alaska.

United States of America, }
District of Alaska. } ss.

I, L. R. Gillette, United States Commissioner, residing at Douglas, Alaska, and ex-officio Judge of the Probate Court, at Douglas, Alaska, do hereby certify that the

foregoing six sheets, in the order in which they are hereto annexed, are full and true copies of the petition for letters of administration, bond of administration, order appointing administrator, oath of administrator, filed, and made and issued in said Probate Court on November 21st, 1900.

Witness my hand and official seal this 13th day of February, A. D. 1901.

L. R. GILLETTE,

United States Commissioner and ex-officio Judge of the Probate Court of Alaska.

And thereupon the plaintiff closed his case in chief.

And the defendant, to maintain the issue on its part, called as a witness C. A. WECK, who, being duly sworn, testified as follows:

“My name is C. A. Weck; I reside at Douglas Island, and resided there during last October. I know the defendant, the Alaska United Gold Mining Company, Edward Hegman, and the plaintiff, Henry Muset. During last October, and prior to that time, I was superintendent of the Alaska United Gold Mining Company, the defendant. The mining department consists of what is known as the Seven Hundred Foot Claim and the Ready Bullion Claim and in connection with these mines and two mills. I was not appointed in writing to my position. My duties as superintendent of this property in a general way, was to conduct the mining business for the company on Douglas Island; it was to see that the work that I wished to accomplish was carried out, and giving

instructions for such purpose. I was the head of the business in Alaska. I know Mr. H. B. Pope. He was employed in the Seven Hundred Mine at that time. He was foreman of the mine at the Seven Hundred Foot claim. There were two mining foremen and two mill foremen under me. There was a foreman for each mine, and a foreman for each mill operated. In addition to that, we had a master mechanic to look after the machinery when it needed extensive repairs, and he was under my orders for everything that would require some work to repair. Of course, minor repairs were done right at the mines by the miners themselves. Mr. Pope and these other foremen were under my supervision and control. Their duties and authority with reference to the business of the Alaska United Gold Mining Company were to carry out my orders; if they didn't do that they wouldn't have been there. They were employed by the superintendent, and were subject to be discharged by the superintendent. They had no authority other than that delegated to them by the superintendent. In regard to hiring and discharging men, our system is when a man wants a job he goes to the foreman, and if the foreman in that department wishes a man he gives him a card to the office. This card is taken to the office, the general office of the company. If the man is satisfactory, he is required to sign the rules of the company, and is placed on the payroll. If not, he is told he can have no job. It is the same way with reference to discharging them. Generally, of course, we comply with the wishes of the foreman. When they request that a man be discharged, we

generally comply with their wishes, except in cases where we know there's been injustice; in that case, of course, the foreman's wish is overruled. The foreman's authority is simply to recommend. That was the position occupied by Mr. Pope and the authority he had during the month of last October. I remember the beginning of the work on the shaft in which the accident to Hegman occurred. I first determined to have the shaft sunk some time in August. A little later I made an arrangement to take bids for the sinking of the shaft by contract. I received about eight bids for the work. Among them was a bid from Museth and one from Hegman. I had a conversation with Museth about it. I did not let the contract for the sinking of the shaft, and determined to sink it by day's pay. There was an increase in wages to the men working in this shaft, because a miner takes more of a risk in sinking a vertical shaft than in working in stopes in a mine. I have been in the mining business about eight years. There was a hoist furnished and a chair ladder furnished the men engaged in sinking this particular kind of a shaft, to get out of the mine after the blasts were fired. In sinking a vertical shaft it is always the custom to have a chain ladder in the shaft in addition to the other means of escape. These ladders are made of chains and cross bars of iron. They are made of chains for the reason that rock being blasted won't injure them as much as they would wooden ladders. These ladders are supposed to be let down from the lowest set of timbers to the bottom of the shaft, so in case there is any stoppage of the engine in hoisting, or

that would cause delay in hoisting the men out, they would have a chance to climb out by the chain ladder. Wherever we are sinking a vertical shaft, we have a chain ladder. It is furnished to the men who are doing the work for the men to use themselves, like any other tools."

On cross-examination, the witness testified as follows: "There was no chain ladder in the shaft at the time of the accident. I am the superintendent and have control of both the mines and both the mills known as the Seven Hundred and the Ready Bullion, and the Seven Hundred stamp-mill and the other mill connected with the Ready Bullion. I was the general superintendent at the time of the accident. I was the superintendent of the company's works in Alaska, their mines and mills. There was no one who had authority over me in Alaska. I had under my supervision the Ready Bullion Mine and Mill, and the Seven Hundred Mine and Mill, and at each I had a foreman, making four foreman in all. I had a foreman in charge of the mine at the Ready Bullion, and a foreman in charge of the mine of the Seven Hundred. Mr. Pope was the foreman at the Seven Hundred. Under the foreman there are gangs of men working under shift-bosses in the Seven Hundred Mine; and those shift-bosses are to a certain extent, under the direction of the foreman. There is connected with the Seven Hundred Mine a blacksmith shop. There is a tramway there and it is more or less connected with the mine. And there are hoists and engines. Each of these branches have in their charge a skilled party to operate them—the engine,

an engineer, the blacksmith shop, a blacksmith and so on. And all these people are under the immediate supervision of the foreman; and that foreman was Mr. Pope. I couldn't state where Pope is now. He is not at the mines, nor in Alaska. He left Alaska on the 20th of January, I think, after this suit was brought against the company. The general office of the company is on Douglas Island at the store up by the Treadwell mine. That's where the men report. My office is there. I haven't any particular office at the Ready Bullion or the Seven Hundred. The whole of these mines at Treadwell, the Ready Bullion, the Mexican, the Seven Hundred, the Treadwell, and all the rest of them, office from the same general point, the store. And these people when discharged reported there from all these places. The foreman in this mine, orders the miners supplies, the small supplies he needs temporarily. And if there is a temporary break in the machinery, and he has the time and it's not too extensive, it's his duty to repair it, or see that it is repaired. If it's extensive he reports it to me. All small breaks, the men look after themselves."

And to further maintain the issues on it part, the defendant next called as a witness, JAMES PIANFETTI, who being duly sworn, testified as follows:

"My name is James Pianfetti. I am from Italy, residence; I reside now on Douglas Island, and resided there last October, and was then working for the Alaska United Company, of which Mr. Weck was superintendent. Had been at work there then close to three years. I

knew Mr. Muset. I was working with Muset, and Hegman, and Stephen on that date, sinking a shaft. I don't know the first names. Had been at work in the shaft about three weeks—that is, at the time of the accident, we had been at work about three weeks. Hegman and Muset had been at work with me the whole of this time. On the 9th of October, we had got the shaft sunk about 25 feet below the skip chute. There had been a chain ladder provided for that shaft. It was at that time in the blacksmith shop. We three men had received instruction as to the chain ladder from Mr. Pope. He told me to put it down the shaft. I had a conversation with Hegman and Muset about those instructions; we was talking about it so we could blast; we had to put timbers in and then chain ladder. We concluded to put in the timbers and ladder after the blast went off. It was the duty of all of us working there to put down the chain ladder. At the time of the accident the chain ladder was in the blacksmith shop. It had not been removed from there. If that ladder had been in the shaft, Hegman could have got out. Mr. Weck employed me. He is the superintendent of the mine.”

On cross-examination, witness testified as follows: “Mr. Weck is superintendent of those properties. That included the Ready Bullion, Ready Bullion Mill, the Seven Hundred, the Seven Hundred Mill, and everything else, Pope was foreman or superintendent in charge of the Seven Hundred Mine. I was not a shift-boss; I was in charge of the crowd that worked in the shaft. I was the boss

over them, and for that reason, Mr. Pope told me to put down that chain ladder. He told me to put it down on the morning of the 9th.

Q. Didn't Mr. Pope ask you what was the reason the chain ladder wasn't put down before?

A. Before the last blast was going to be, yes, and put the chain ladder down in time. He said to put it down.

Q. Mr. Pope told you to do it that way, didn't he?

A. Mr. Pope told me to put it down.

Q. Didn't Pope tell you about eight o'clock that the chain ladder was ready and to put it down at noon?

A. Yes, sir.

Q. Now, Mr. Pianfetti—

A. No, sir; he didn't tell me to put it down at noon—

Q. —air was the motive power of that shaft, wasn't it?

A. Yes, sir.

Q. If the bucket was running at all that was a good safe place to work, wasn't it?

A. Yes, sir.

Q. Had you ever had a chain ladder there before that?

A. Not since we were there.

Q. Isn't it a fact that the ladder was broken, and wasn't in a fit condition to be put down at all until that morning?

A. There was a whole one to put down.

Q. Down in the blacksmith shop being fixed, wasn't it.

A. Yes, sir. Pope gave me the instructions to put it down. He had authority to give those instructions. I don't know if Muset and Hegman were in the mine when those instructions were given; they wasn't around there

--didn't see them anyway. I can't tell where I first saw them after I had this conversation with Pope. I didn't see them before getting down to the shaft. I think I first saw them when I got down in the shaft. I went down there as soon as Pope told me about it. They were getting ready to blast, shoveling a few buckets of rock, and so.

Q. And then you told them about the ladder business as soon as the blasting was over?

A. We had been talking about that over before—

Q. Well, answer my question. You told them as soon as the blasting was over you would put up some timbers and then put that ladder down?

A. We noticed that before.

Q. You didn't tell them that then at the time.

A. I did not.

Q. You told them nothing about the chain ladder at that time? A. No.

Q. Nothing all that forenoon?

A. I told them—

Q. After the man was dead you told them—that it?

A. No before.

Q. Did Pope ever tell Musset or Hegman about that ladder in your presence? |

A. No; *I ain't, was there,* but he told them. They have got a blacksmith working at the mine; and a hoist, a shaft, and another shaft called the "glory hole"; and a tramway and various other things; and different men in charge of these various things, and they were all under Mr. Pope."

On redirect examination, the witness testified as follows: "I suppose Mr. Pope was looking after everything right at the mine there, but Mr. Weck was higher over Mr. Pope. We had the old chain ladder down in the blacksmith shop and Pope told me to put that down for the time. That was when we first started to do the blasting.

Q. When did you speak to Mr. Muset or Mr. Hegman about whether you would put the ladder down or not?

A. Well, it had been talked over to the boys; we says they have a chain ladder down there, but I guess we will wait to put the timbers down. They don't say yes. They didn't said anything.

Q. When was that you had this talk—how long before this accident?

A. Well, this was about a week before, but they was working night shift, Muset and Hegman, and I told them, because I take my orders going in. I was working day shift all the time.

Q. If they had objected to working there without the chain ladder down, would it have been put down?"

(To the above question the plaintiff, by his counsel, objected, because irrelevant and immaterial, which objection the Court sustained and the plaintiff then and there excepted to such ruling. Continuing witness testified as follows:)

"The new chain ladder was finished the day before the accident. I was instructed to put it down on the morning of the 9th. That chain ladder was forty-five feet long.

It took two men to pack it—all they could do. It was in the mine on a set of timbers so far as you could raise your arm, up so far—fastened on the timbers at the top and dropped to the bottom. It wouldn't take two men no time at all—short time to put it in, just the time to take it from the blacksmith shop, and put it on the bucket. The ladder and timbers would be disarranged by the blast. If it's put down too far it would be broken to pieces; of course if it's put down so far as a man could reach up to climb up it's all right. After I was told by Pope to put down the new chain ladder, I never talked with Muset and Hegman about it.”

On recross-examination, the witness said: “This ladder was hung on timbers when it was put in, and I was waiting to put the timbers in at noon so I could hang the ladder on them.”

And to further maintain the issues on its part, the defendant next called as a witness ROBERT MUSTER, who being sworn testified as follows:

“I reside on Douglas Island. I remember the accident on the 9th day of last October. I was at that time in the employ of the Alaska United Gold Mining Company: I was blacksmith in the Seven Hundred Mine. I remember making a chain ladder. I made it under the instructions of Mr. Pope, the foreman. It was supposed to go down to the bottom of the shaft, being dug by Hegman, Muset and others. I finished the ladder on the evening of 8th of October about five o'clock. I do not recollect any chain ladder in the blacksmith shop at prior to that

time. I believe they had the old one down below. There was another one there. I did not hear any instructions given to Pianfetti, Hegman, or Muset with reference to this ladder. I was told to have done as quickly as possible, and I finished it on the 8th, and told the foreman when it was done."

On cross-examination, the witness testified as follows: "I am the blacksmith at the Seven Hundred Mine. Besides the blacksmith shop they have got a hoist, a shaft, and tramway leading down to the mill. There was a mine foreman there, and then the superintendent over the foreman.

Q. Who was the foreman over that whole branch of the work, the mine itself?

A. Pope. He was the foreman over the blacksmith shop, the shaft, and the hoist. Mr. Pope included them all, I think. My work comes under the foreman Mr. Pope. The ladder I spoke of was completed on the evening of the 8th of October. I rolled it and laid it right close to the door of the shop and it laid there on the morning of the ninth. Mr. Pope was in the shop on the forenoon of the ninth. He was there several times—quite a few times. The ladder rolled up made a bundle about 14 inches wide and a foot or 18 inches high. It would make quite a bundle lying on the floor. I noticed it lying there during the forenoon of the 9th, and if Mr. Pope looked around he would probably seen it."

And to further maintain the issues on his part, the defendant next called as a witness, NELS OLIN, who having been sworn testified as follows:

"I resided on Douglas Island last October and was in the employ of the Alaska United Gold Mining Company; had been working for them twenty-two months. I knew Mr. Hegman and Mr. Muset. I had been employed with them in this shaft in which the accident happened. I don't know anything about any directions being given by Mr. Pope to put down a chain ladder.

By the COURT.—Who did you learn it from—the dead man? Did you ever hear of any directions being given by Pope from the dead man?

Answer. No, sir; not by Mr. Pope.

Q. By the COURT.—Well, who did you hear it from?

A. We passed the remark between us.

Q. By the COURT.—Who?

A. All of us that worked there.

Q. By the COURT.—Who was working there?

A. Henry Muset, and Ed Hegman and Jim.

Q. By the COURT.—What was said about it down there, as near as you can recall?

A. Just a passing remark that they should have a chain ladder down there, that they promised to get one, but it wasn't ready.

Q. By the COURT.—Why was that?

A. Well, Jim said they couldn't get one.

Q. By the COURT.—Said it wasn't ready to put down?
A. No, sir.

Q. By Counsel for Plaintiff.—Did the others agree with what was said by them?

A. They were asking several times to get a chain ladder.

Q. It was talked over several times?

A. Yes, sir; just passed remarks.

Q. How long did you work there?

A. In the shaft?

Q. Yes?

A. From—I started the first of December.

Q. In this shaft. How long were you working with these men in this shaft, prior to the accident?

A. Working there from the 23d of September to 9th of October.

Q. Working down in the shaft?

A. No, sir; on the hoist.

Q. How long did you work down in the shaft with these men?

A. I wasn't working down in the shaft at all.

Q. You were working at the hoist? A. Yes, sir.

Q. And you heard the matter talked over about getting this ladder? A. Yes, sir.

Q. Do you know anything about an old ladder being there, any ladder besides the new one?

A. Yes; I know they used to have one in the Glory Hole.

Q. Where was that during this time?

A. I guess that was in the Glory Hole—using it in there."

On cross-examination the witness testified as follows:-

Q. That old ladder was in the Glory Hole at the time of the accident, wasn't it?

A. Yes, sir, I think she was; I don't know; he wasn't there; I didn't see him anywhere.

Q. In this conversation, Jim, the shift-boss—when he told you there ought to be a ladder down there, he said he had been promised one, but it wasn't ready yet, is that it?

A. Yes, sir; they had some such talk about it.

Q. This conversation was a very few days before the accident—just before?

A. Yes, sir; they was passing remarks three or four times about it.

Q. But all the three or four times were shortly before the accident?

A. Yes, sir.

Q. But there has never been a ladder down there?

A. No, sir; not at that time.

Q. Is that a safe place to work in if the air in the shaft and the hoist is in good running order?

A. Yes, sir.

Q. Absolutely safe? A. Yes, sir.

On redirect-examination, the witness testified as follows:

Q. About what time did this conversation take place?

A. We was talking about it in the night shift, and when we come on the day shift.

Q. How long before the 9th—what day of the month?

A. I couldn't tell exactly what night it was.

Q. Now, when they spoke about putting the old ladder down, that was when Mr. Pianfetti spoke about the new ladder they were making, wasn't it?

A. Yes, sir.

Q. That is, the conversation you speak about is the conversation when Mr. Pianfetti spoke about putting the new ladder down?

A. No, I didn't hear that.

Q. Did you say Mr. Pianfetti was on the night shift with you? A. No; he was on the day shift.

Q. He wasn't on the night shift with you?

A. No, sir.

Q. And Hegman and these other men were on the night shift and then afterward changed to the day shift with you? A. Yes, sir.

Q. And the first conversation when you spoke about the necessity of the chain ladder being down there was on the night shift?

A. Yes, sir; we was passing remarks about it, on the night shift.

On recross examination, the witness testified as follows:

Q. And in all these conversations spoken of by Mr. Pianfetti or others was to the effect that they had been promised a ladder, and the ladder would be put down as soon as it was finished, is that right— A. Yes, sir.

Q. And these were had shortly before the accident?

A. Yes, sir.

Q. You don't remember the exact time—but very shortly before. Now, I will ask you, Mr. Olin, whether they ever talked about the old ladder at all?

A. Well, I heard Jim talking about that—give us

the old ladder, and put it down, or something like that.

Q. Was the old ladder any good?

A. I don't know. He was up in the Glory Hole.

Q. That was Jim that said that? A. Yes, sir.

Q. Hegman wasn't there at all when he said that?

A. No; I don't think he was.

And thereupon the defendant rested.

And the plaintiff, in rebuttal, thereupon called the following witnesses who, on their oaths aforesaid, testified as hereinafter set forth.

HENRY MUSET called on rebuttal:

Direct Examination.

Q. Mr. Muset, did you hear all this testimony in reference to a chain ladder being put in the shaft by the witnesses who preceded you—that is, the testimony of Pianfetti here in regard to the chain ladder, here on the stand? A. Yes, sir.

Q. State to the jury what was said or done about that chain ladder so far as you know.

A. This was the day before the accident happened, Jim said we will blast this out and put in a set of timbers, and then take down the chain ladder.

Q. Was anything said about a chain ladder prior to that? A. Not that I know.

Q. Was anything said in the presence of you or Hegman prior to that in reference to a chain ladder?

A. Not that I know of.

Upon cross-examination, the witness testified as follows:

Q. You say that occurred the day before—was that all that was said? A. Yes, sir.

Q. You didn't object? A. To what?

Q. To the chain ladder not being put down at that time.

A. No; I didn't think the chain ladder was ready.

Q. I didn't ask you that. I asked if you objected.

A. No, sir.

Q. Did Mr. Hegman object?

A. Not that I know of.

Q. Do you know whether the chain ladder was ready or not? A. I do not.

GUY FALCONER called on rebuttal.

Direct Examination.

Q. You have been sworn before. State whether you were working in the blacksmith shop of the Seven Hundred Mine on October 9th, 1900.

A. Yes, sir.

Q. Were you working in the shop on that morning?

A. Yes, sir.

Q. State whether you saw a chain ladder there.

A. Yes, sir.

Q. State whether you had heard any conversation with Pope, the foreman, and the shift boss, Pianfetti, in relation to that ladder? A. Yes, sir.

Q. What was that conversation?

A. Mr. Pope told him the ladder was ready and to take it down at noon.

Q. What time of day was that?

A. Somewhere about eight o'clock in the morning.

Q. And the chain ladder, at that time, where was it?

A. In the shop.

Q. The accident occurred just a while before noon?

A. Yes, sir.

Q. State whether or not that chain ladder remained in the shop during the forenoon previous to the accident?

A. Yes, sir.

Q. Where was it laying?

A. Right near the door.

Q. State whether or not Mr. Pope was down during the day.

A. Yes, sir; he was in there during the day.

Q. Was the ladder in a position where he could have seen it from where he was? A. Yes, sir.

Upon cross-examination, the witness testified as follows:

Q. When did you first hear about this conversation?

A. The morning of the 9th.

Q. The morning of the accident?

A. Yes, sir.

Q. You were in the blacksmith shop—what were you doing in there?

A. I was threading some bolts.

Q. Threading bolts? A. Yes, sir.

Q. Are you a blacksmith? A. No, sir.

Q. And then you were holding the ladder, you say?

A. Yes, sir.

Q. And you heard this conversation about eight o'clock? A. Somewheres about eight o'clock.

Q. Don't you know they were working down in the shaft before that?

A. Yes; but they came back up again.

Q. Weren't they down there working at that time?

A. Pianfetti wasn't; I don't know whether anyone else was or not.

Q. You are positive Pope said for him to send it down at noon? A. Yes, sir.

Q. Now, you may state exactly the words, as near as you can?

A. Mr. Pope came in—or rather Mr. Pianfetti came in, and Mr. Pope was standing watching them bolts, and Pope says to Pianfetti; "That there ladder is ready now, and you better take it down at noon," and Pianfetti says, "All right," and turned and walked off.

Q. How long did you stay in the blacksmith shop?

A. Until Mr. Pope came and told me he needed me.

Q. Well, how long was that?

A. I guess about an hour.

Q. Didn't you say Pope stayed there and Pianfetti went off? A. He did.

Q. How did he come back if he stayed there?

A. You asked me when I went away, not when Pope went?

Q. Yes. A. I went about an hour after.

Q. You stayed there an hour threading bolts?

A. Yes, sir.

Q. That would be until nine o'clock. Where did you go then?

A. I went to the hoist and swept a little, and came in there and he came in there and told me to get a ladder so he could shut off the air, which I did.

Q. You got a ladder and put it up?

A. Yes, sir.

Q. That was about eleven o'clock?

A. Yes, sir.

And the above and foregoing was all the evidence in full introduced on the trial of said cause by either party thereto.

And thereupon the defendant made and presented to the Court, the following motion, to wit:

HENRY MUSSET, Administrator of the
Estate of Edward Hegman, Deceased,

vs.

ALASKA UNITED GOLD MINING
CO.,

Defendant.

No. 26A.

Motion.

The defendant requests the Court to instruct the jury to return a verdict for the defendant, because—

1. The evidence conclusively shows that H. B. Pope, whose negligence in cutting off the air is the only negligence, plead or attempted to be proved by the plaintiff, was a fellow-servant of the deceased, Edward Hegman.

2. The evidence conclusively shows that the deceased, Edward Hegman, and the plaintiff, Henry Muset, were guilty of contributory negligence in not putting the chain ladder in the pit, and that but for such contributory negligence, the accident resulting in the death of Edward Hegman would not have occurred.

MALONY & COBB,

Attorneys for Defendant.

Which said motion was by the Court overruled and denied; to which action of the Court, the defendant then and there excepted.

And thereupon the Court charged the jury as follows:

In defining the duties of the master toward the servant, I cannot do better than to use the language of the Supreme Court of the United States:

“A master employing a servant impliedly engages with him that the place in which he is to work, and the tools or machinery with which he is to work, or by which he is to be surrounded, be reasonably safe. It is the master who is to provide the place and the tools and the machinery, and when he employs one to enter his service he impliedly says to him that there is no other danger in the place, the tools, and the machinery, than such as is obvious and necessary. Of course some places of work and some kinds of machinery are more dangerous than

others; but that is something which inheres in the thing itself, which is a matter of necessity, and cannot be obviated. But within such limits, the master who provides the place, the tools, and the machinery owes a positive duty to his employee in respect thereto. That positive duty does not go to the extent of a guaranty of safety, but it does require that reasonable precaution shall be taken to secure safety; and it matters not to the employee by whom that safety is secured or the reasonable precautions therefor taken. He has a right to look to the master for the discharge of that duty; and if the master, instead of discharging it himself, sees fit to have it attended to by others, that does not change the measure of obligation to the employee or the latter's right to insist that reasonable precautions shall be taken to secure safety in these respects. Therefore, it will be seen that the question turns rather on the character of the act than on the relation of the employees to each other. If the act is one done in the discharge of some positive duty of the master to the servant, then negligence in the act is negligence of the master. But if it be not one in the discharge of such positive duty, then there should be some personal wrong on the part of the employer before he is held liable therefor.

“But it may be asked, Is not the duty of seeing that competent and fit persons are in charge of any particular work as positive as that of providing safe places and machinery? Undoubtedly it is, and requires the same vigilance in its discharge; but the latter duty is discharged

when reasonable care has been taken in providing safe place and machinery, and so the former is as fully discharged when reasonable precautions have been taken to place fit and competent persons in charge. Neither duty carries with it an absolute guaranty. Each is satisfied with reasonable effort and precaution."

To which instruction, the defendant then and there excepted because not applicable to the issues made by the pleadings and the evidence in that the question of the failure of the master to provide a safe place to work, nor the question of the negligence of the master in selecting competent and fit persons to have charge of any particular work, were not raised either by the pleadings or the evidence.

The Court further instructed the jury as follows:

"If he (meaning Pope) had absolute charge of that particular department, and exercised the powers and duties of the master toward the employees working under him, he was a vice-principal.

"If you find from the weight of the evidence in this case that Pope, the foreman, was the vice-principal of the company or corporation defendant, and that said Hegman lost his life through the careless and negligent act of said Pope, without any negligence on the part of Hegman himself, then you should find for the plaintiff."

To which instruction, the defendant then and there excepted because there was no evidence before the jury upon which to base a finding that said Pope was such vice-principal; but the evidence conclusively showed that he was a fellow-servant.

And the Court further instructed the jury as follows:

“There is some evidence before you in reference to a certain chain ladder ordered to be furnished to the men in sinking the shaft, and that said ladder was a reasonable and proper means used, or to be used, by the men sinking the shaft, whereby they might escape from danger in case of accident to the other machinery and appliances used in hoisting the men from the shaft at such times as blasts were exploded. If you find from the weight of the evidence in this case that said ladder was furnished to the men for their use in this behalf, and through the carelessness and negligence of the men engaged in the work of blasting in the shaft, and that the deceased Hegman was one of these, and that the men could have escaped from impending danger had the ladder been put in place, and they negligently and carelessly failed to put it in place, then this was contributory negligence upon the part of deceased and the other men working with him, such as relieved the defendant from all liability for his death. If, on the other hand, that such ladder was not furnished to the employees, and was not put in place because of the orders of the said Pope, if you find Pope to have been a vice-principal, and that the death of Hegman resulted from the failure to put in said ladder and by the shutting off the air by Pope, or under his orders and direction so that the other machinery and appliances for hoisting the men could not be operated; and you further find that Pope was so acting, in shutting off the air, was exercising duties entrusted to

him as a vice principal of the master, then the defendant is liable for the death of the said Hegman.”

To which said instruction, the defendant then and there excepted because the evidence conclusively showed that a chain ladder was furnished the deceased Edward Hegman and the other men at work in the shaft with him, and the Court erred in submitting such question to the jury.

And all the instructions given by the Court in the order given are as follows:

The Court instructs the jury that the credibility of witnesses and the weight to be given their testimony is a matter exclusively for the jury.

The credit of the witness depends largely upon two things: His opportunity and ability to know what occurred, and his disposition for telling the truth as to the occurrence. The statement of a witness having superior opportunities for knowing what took place, and superior intelligence and memory, other things being equal, are entitled to the greater weight before the jury. A witness who is interested in the result of the suit will not always be as honest, fair, and candid in his testimony as one who is not interested, but witnesses are sometimes found whose interest in the suit in nowise affects their truthfulness. But, as before stated, you are the exclusive judges of the credibility of witnesses and the degree of credit to be given their testimony.

It is the duty of the jury to consider the whole of the evidence, and to render a verdict in accordance with the weight or preponderance of the evidence in the case.

Gentlemen of the Jury: The case you are to consider is not an infrequent one in mining affairs. That accidents will occur where powers are set in motion more than ordinarily dangerous to human life, is reasonably certain. The infirmities of human nature are such that accuracy and promptitude in the discharge of all duties are quite rare, and while generally expected, are not often realized in the conduct of affairs.

The employer owes certain duties to the employee, and for the purpose of this case I shall call the employer the master, and the employee, the servant.

While the master owes certain duties to the servant, the servant takes certain risks upon himself. It is said that the general rule of law is now firmly established that one who enters the service of another takes upon himself the ordinary risks of the negligent acts of his fellow-servants, in the course of his employment. As a part of his contract of hire, the servant takes all the risks necessarily incident to the employment in which he engages. As the carelessness of fellow-servants is among those risks necessarily incident to the employment, in work more than ordinarily dangerous, it is conclusive that the servant takes this risk as a part of his contract of hire.

In defining the duties of the master toward the servant I cannot do better than to use the language of the Supreme Court of the United States:

“A master employing a servant impliedly engages with him that the place in which he is to work, and the tools

or machinery with which he is to work, or by which he is to be surrounded be reasonably safe. It is the master who is to provide the place and the tools and the machinery, and when he employs one to enter his service he impliedly says to him that there is no other danger in the place, the tools, and the machinery, than such as is obvious and necessary. Of course, some places of work and some kinds of machinery are more dangerous than others; but that is something which inheres in the thing itself, which is a matter of necessity, and cannot be obviated. But within such limits, the master who provides the place, the tools, and the machinery, owes a positive duty to his employee in respect thereto. That positive duty does not go to the extent of a guaranty of safety, but it does require that reasonable precaution shall be taken to secure safety; and it matters not to the employee by whom that safety is secured or the reasonable precautions therefor taken. He has a right to look to the master for the discharge of that duty; and if the master, instead of discharging it himself, sees fit to have it attended to by others, that does not change the measure of obligation to the employee or the latter's right to insist that reasonable precautions shall be taken to secure safety in these respects. Therefore, it will be seen that the question turns rather on the character of the act than on the relation of the employees to each other. If the act is one done in the discharge of some positive duty of the master to the servant, then negligence in the act is negligence of the master. But if it be not one in the discharge of such positive duty, then there should be some

personal wrong on the part of the employer before he is held liable therefor.

“But it may be asked: Is not the duty of seeing that competent and fit persons are in charge of any particular work as positive as that of providing safe places and machinery? Undoubtedly it is, and requires the same vigilance in its discharge, but the latter duty is discharged when reasonable care has been taken in providing such safe place and machinery, and so the former is as fully discharged when reasonable precautions have been taken to place fit and competent persons in charge. Neither duty carries with it an absolute guaranty. Each is satisfied with reasonable effort and precaution.”

As has just been stated, the employee, in his contract of hire, takes the risks of the carelessness and negligence of the fellow-servants. It becomes necessary, therefore, to determine who fellow-servants are. The general rule is that those entering the service of a common master, becoming thereby engaged in a common service, are fellow-servants. When the business of the master is of such great and diversified extent that it necessarily separates itself into departments of service, the individuals placed by the master in charge of these separate branches and departments of service and given absolute control therein, may be properly considered, with respect to the employees under them, vice-principals, and sub-representatives of the master as fully and completely as if the entire business of the master were placed by him under one department. And in this connection the Court instructs you that it is not material by what name such

persons are known or designated, whether they are known as foreman, boss, superintendent, or by some other name.

The boss of a small gang, performing work in one particular part of the mine, or the boss or foreman of a gang in charge of a shaft, or in stoping ore, or any other portion of the work of the mine where both or all are engaged in the same common business or enterprise, viz., the business of extracting ore from a quartz mine or lode mine, are not vice-principals of the master in the performance of that work, but are, ordinarily, unless some special power, or some special duty, is entrusted to them, fellow-servants with the other men in the same employment under their direction and control. Such a boss, such an overseer, foreman, or superintendent, is not, as I say, ordinarily the vice-principal, and does not become so by reason of the position that he holds. The claim made by the plaintiff in this case is, that Mr. Pope, the foreman, as he was called, was in charge of a particular department of the business of the master. That being so in charge of a particular department, he occupied toward the other employees working under him in the same department, the position of vice-principal; or, in other words, in that respect he took the place of the master. If he had absolute charge of that particular department, and exercised the powers and duties of the master toward the employees working under him, he was a vice-principal. If he did not have that absolute control, was subject to the control of a superior, had no discretionary

power or authority, and performed duties under the direction of a superior under rules and regulations formulated for his guidance, he was not a vice-principal, but a fellow-servant.

The claim made by the plaintiff in this case is, that the deceased Edward Hegman, was killed in the mine of the defendant company through the negligence and carelessness of H. B. Pope, the foreman, in shutting off the air from the hoist so that the men engaged in blasting at the bottom of the shaft, or that the said Hegman was prevented thereby from escaping from the shaft, and his death resulted thereby. If you find from the weight of the evidence in this case that Pope the foreman was the vice-principal of the company or corporation defendant, and that said Hegman lost his life through the careless and negligent act of said Pope, without any negligence on the part of Hegman, himself, then you should find for the plaintiff. On the other hand, if you find that Pope was not a vice-principal at the time, and was not given the discretionary power or control as to any of the duties of the master toward his employees, or, if you find that Hegman's death was the result of his own carelessness or neglect, you should find for the defendant.

There is some evidence before you in reference to a certain chain ladder ordered to be furnished to the men in sinking the shaft, and that said ladder was a reasonable and proper means used, or to be used, by the men in sinking the shaft, whereby they might escape from danger in case of accident to the other machinery and appli-

ances used in hoisting the men from the shaft at such as blasts were exploded. If you find from the weight of the evidence in this case that said ladder was furnished to the men for their use in this behalf, and through the carelessness and negligence of the men engaged in the work of blasting in the shaft, and that the deceased Hegman was one of these, and that the men could have escaped from impending danger had the ladder been put in place, and they negligently and carelessly failed to put it in place, then this was contributory negligence upon the part of the deceased and the other men working with him such as relieved the defendant from all liability for his death. If, on the other hand, that such ladder was not furnished to the employees, and was not put in place because of the orders of the said Pope, if you find Pope to have been a vice-principal, and that the death of Hegman resulted from the failure to put in said ladder, and by the shutting off of the air by Pope, or under his orders and direction, so that the other machinery and appliances for hoisting the men could not be operated; and you further find that Pope was so acting, in shutting off the air, was exercising duties entrusted to him as a vice-principal of the master, then the defendant is liable for the death of the said Hegman.

Damages that may be recovered for the death of any man caused by the negligent act or acts of another is limited to ten thousand dollars. In considering what, if any, damages the plaintiff is entitled to recover, you will consider his life-expectancy, or, in other words, the number of years he might reasonably expect to live, his earn-

ing capacity, the amount that he could save, or ordinarily did save therefrom, and in excess of the expense of living. There is a difference in the earning capacity of men and therefore a difference in the amount of damages that may be recovered where death results from wrongful acts of others.

You are not to understand that the term of years a man may live and the amount he might earn during that period, less the expense of living, is to furnish a rule or measure of damages. Whatever a man's life expectancy, you all understand that he is liable to die at any moment, and his life to be limited to a few days or years, or it may extend far beyond the limit fixed by the life statement. The life expectancy, as fixed by these tables, is the average life of men in good health and at the age of deceased. It would be presumptuous to claim that the defendant would have lived longer than the average, or that he would live but a few days. But you are to consider this matter of life expectancy as one of the circumstances only upon which to base a calculation of the damages that have been sustained, if any, to the estate of deceased. Was he a man of industry, a man of sobriety? Was he a man that earned an annual sum over and above his expenses of living? Had he constant employment, or did he work but portions of the time, and did his earning exceed his reasonable expenses? These are all matters that may enter into your consideration in determining the damages that may be recovered by the plaintiff in this case, if you find for the plaintiff. You are to return such

damages, if any, as you find the estate entitled to under the evidence in this case.

I am requested by the plaintiff and the defendant to give certain instructions. These I give, and you will consider them as a part of the instructions of the Court; and these are as follows:

The following instructions were thereupon given at the request of plaintiff. Instructions by plaintiff:

“The Court instructs the Jury that, if you find from the evidence that the plaintiff is the duly acting and qualified administrator of the estate of Edward Hegman, deceased, and if you find that the said Edward Hegman was an employee of the defendant corporation, working in their mine, known as the ‘700 Mine,’ as a miner, running and operating what is commonly known as a machine drill, in the underground workings of said mine, on or about the 9th day of October, 1900; and if you find that while the said Edward Hegman and his colaborers were at the bottom of a shaft in said mine, sinking the same, pursuant to the orders and directions of the foreman and vice-principal of the defendant corporation, and that after they had sunk drill holes in the bottom of said shaft and had loaded them with powder and fuse, preparatory to blasting them, and after giving the proper signal indicating their purpose and intention of lighting and firing off said blast, and that after the parties in charge of the hoist had indicated their readiness and ability to hoist the said Edward Hegman and associates out of said shaft and before the said blast went off and exploded; that act-

ing upon said signals and believing in the safety of the regulations, machinery and the workings thereof, the said Hegman and his associates did light said fuses and gave the proper signals to the parties in charge of the elevator to be hoisted to a place of safety; that at the time the air by means of which said elevator was raised was shut off above and that it was impossible for the hoist or elevator to be raised on that account; that the said Edward Hegman made every possible effort to escape death and injury from the explosion of said blast, and that thereupon the said blast did explode, thereby wounding and mangling the said Edward Hegman, then and there causing death of the said Edward Hegman. And if you find that the said Edward Hegman did in no way contribute to his death and that the same occurred without any fault or negligence on his part, and if you find that the death of the said Edward Hegman was brought about by the carelessness and negligence of one H. B. Pope, in causing the air and power to be shut off and disconnected, so that the elevator in the mine in which Edward Hegman was employed could not be raised and hoisted and the said Hegman removed from danger. And if you further find that the said Pope knew, or ought to have known, that at the time he caused said air to be disconnected that the said Edward Hegman was in a place of danger and could not escape without the use of said air, and if you further find that the said Pope was at that time a vice-principal or sub-representative of the company, or a superintendent or foreman in charge of a

separate branch of the said company's business, as explained in these instructions, then the Court instructs you that you must find for the plaintiff in such sum as he proves himself entitled to under the law and the evidence."

The following instructions were thereupon given at the request of defendant:

"If the deceased, Edward Hegman, knew or should have known that the chain ladder spoken of by the witnesses should have been placed in the shaft, as an additional safeguard against the failure of the air hoist to work, and he continued to work in the shaft without the chain ladder being put in, then he assumed all risks arising from a failure of the air hoist and you will find for the defendant. }

"The evidence shows in this case that the deceased, Edward Hegman, was a man of about thirty years of age; that he was a laborer, and had been working for himself some eight years or more; that his estate at the time of his death, consisted of nothing but the claim in suit herein. (

"Now, if you find and believe from the evidence that the said Edward Hegman from his character, habits, etc., would not probably have left any greater estate at the time of his probable death, had he not died on October 9th, 1900, then you will find for the plaintiff only nominal damages.)

"If you believe from the evidence that if the chain ladder, spoken of by the witnesses, had been placed in the

shaft prior to the time of the accident, that Hegman could have climbed said ladder and thus escaped, and if you further believe that the failure to put said ladder in the shaft was due in any manner to the negligence or carelessness of Edward Hegman, and the men working with him in the shaft, then you will find for the defendant."

"In this case, if it is shown that the defendant company furnished a chain ladder for use in the shaft where the accident happened, to give another means to the men working therein to get out, in the event the compressed air hoist should for any reason, fail to work and the evidence shows that the chain ladder was not put in the shaft.

"Now, if you find and believe from the evidence that H. B. Pope ordered or directed this ladder to be placed in the shaft and the deceased, Edward Hegman, knew of this order, and consented and agreed that the ladder should not be put down until after the blast, which happened to cause his death, should be fixed; or if he knew that such order to put in the chain ladder had been given and was being disobeyed, and he continued to work in the shaft, notwithstanding, then the said Edward Hegman assumed all the risk of the air failure to work and he cannot recover in this cause.

"In assessing the plaintiff's damages in this case, you cannot allow anything for the sufferings of the deceased, Edward Hegman, and you are not to consider such suffering in arriving at your verdict; nor can you allow anything for the sorrow, grief, or mental suffering of his relatives or friends. In fixing plaintiff's damages, if any,

by reason of the death of Edward Hegman, you will determine the sum, if any, in which Hegman's estate had been injured by his death; and in determining this question, you will take into consideration his age, the probable length of time he would have lived, his habits, and earning capacity over and above his expenses and all the circumstances in evidence bearing on the question, and allow such sum only as the estate of Edward Hegman, would, in view of all the evidence, reasonably have been worth at the time of his probable death, had he not died on the 9th of October, 1900."

"You will, gentlemen of the jury, consider all of the evidence of the case under the instructions given you by the Court, and when you have agreed upon your verdict, your foreman will sign the same in your presence, and you will return your verdict into Court.

"I hand you, with these instructions, the pleadings in the case and two forms of verdict. You will sign such verdict as in accord with your findings."

And the jury having returned their verdict in favor of the plaintiff and against the defendant for the sum of \$10,000, the defendant, on the 18th day of February, 1901, filed its motion for a new trial, which is as follows, to wit:

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

THE ALASKA UNITED GOLD MIN-
ING CO.,

Defendant.

No. 23A.

Motion for New Trial.

Now comes the defendant, by its attorneys, Malony & Cobb, and moves the Court to set aside and hold for naught the verdict of the jury herein, and grant a new trial of this action for the following reasons, to wit:

I.

For error of the Court in the admission of evidence for the plaintiff objected to by defendant, and duly excepted to as shown in the bill of exceptions.

II.

Errors of the Court in sustaining objections of the plaintiff to competent and material evidence for the defendant, as shown in the bill of exceptions.

III.

For the error of the Court in refusing the request of the defendant at the conclusion of the whole evidence, to return a verdict for the defendant.

IV.

For the errors of the Court in the instructions given as is particularly pointed out in the exceptions taken to this said charge.

V.

Because the verdict of the jury in finding for the plaintiff, in any sum at all, is contrary to, and wholly unsupported by, the evidence in this: 1st. The evidence conclusively showed that H. B. Pope, by whose negligence plaintiff's intestate was killed, was a fellow-servant of the said intestate. 2d. The evidence further conclusively showed that said intestate was a skilled miner, having had years of experience in such work; that he knew a chain ladder was customarily used in shafts such as that in which the accident occurred, to afford the men in such shaft an additional means of egress therefrom; that a ladder for this identical shaft was furnished by defendant, that such ladder was not put in the shaft, and that said intestate either consented to the ladder not being put in or continued the work in the shaft without the ladder and without objection thereto and knowing the danger therefrom, and thereby was guilty of contributory negligence and assumed all risks of such accidents as that by which he was killed.

VI.

The amount of damages awarded by the jury is grossly excessive, and wholly without support in the evidence, and were manifestly dictated by the irregular conduct of

plaintiff's counsel in his closing, wherein he passionately appealed to the jury to return such a verdict as would stop the defendant from filling the graveyard with men negligently slaughtered in its mine, and teach it the value of the life of a man; and other like prejudicial language, in the use of which said counsel had to be stopped and admonished by the Court three different times.

MALONY & COBB,
Attorneys for Defendant.

And afterwards, on the 16th day of March, 1901, the Court made its order overruling the motion for a new trial, which is as follows, to wit:

The United States of America, }
District of Alaska. } ss.

In the United States District Court for the District of Alaska,
Division No. 1.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,
Plaintiff,
vs.
THE ALASKA UNITED GOLD MIN-
ING COMPANY (a Corporation),
Defendant.

Order Overruling Motion for a New Trial.

This cause coming on regularly to be heard upon defendant's motion for a new trial herein, and the Court

having heard the argument of counsel, and being fully advised in the premises, it appears to the Court that a new trial should not be granted, and that said motion should be overruled upon the plaintiff's remitting \$7,000 of the sum for which the verdict was returned.

Now, therefore, it is hereby ordered, adjudged, and decreed that the defendant's motion for a new trial herein be, and that the same is hereby denied and overruled, to which said ruling of the Court the defendant now and here excepts.

Done in open court this 16th day of March, A. D. 1901.

M. C. BROWN,

Judge of the Above-named Court.

And now the said defendant requests forty days in which to reduce his exceptions to writing and present the same for allowance and settlement by the Court, which said time is allowed by the Court.

M. C. BROWN,

Judge.

And inasmuch as the facts aforesaid and the rulings of the Court thereon do not appear of record, the defendant prays that this its bill of exceptions may be allowed, signed, sealed, and filed as a part of the records herein.

MALONY & COBB,

Attorneys for Defendant, The Alaska United Gold Mining
Co.

*In the United States District Court for the District of Alaska,
Division No. 1.*

HENRY MUSET, Administrator of the Estate of Edward Hegman, Deceased, Plaintiff,	}
vs.	
THE ALASKA UNITED GOLD MIN- ING COMPANY, Defendant.	}

Order Approving Bill of Exceptions.

The foregoing paper writing, consisting of sixty-six pages of typewritten matter, and marked "Bill of Exceptions," was presented to me for approval on the 15th day of April, 1901, at Skagway, within the District of Alaska, and the First Division thereof, a copy of the same having been delivered to counsel for plaintiffs the 13th day of the same month, and the Judge of said Court was requested to sign, settle, and approve the same without other or further notice.

It being found that the said bill of exceptions as presented was not in all things correct, it was thereafter amended so that the same should conform to the facts,

and being so amended the Judge of said Court now, on this 7th day of May, 1901, over the objection of counsel for the plaintiff—which said objection is in writing—approves and signs the said bill of exceptions and orders that the same be filed nunc pro tunc as of the 15th of April, 1901, and made a part of the record in the case.

(Signed)

MELVILLE C. BROWN,

Judge.

Bill of exceptions endorsed as follows: 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, Plaintiff, vs. Alaska United Gold Mining Company, Defendant, Bill of Exceptions. Filed May 8, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant. Filed as of April 15, 1901, by order of Court.

And afterwards, on May 7, 1901, the defendant filed his assignment of errors, which reads as follows:

In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

No. 23A.

ALASKA UNITED GOLD MINING
COMPANY,

Defendant.

Assignment of Errors.

Now comes the Alaska United Gold Mining Company, the plaintiff in error, and assigns the following errors committed by the lower Court in the trial of the above-entitled and numbered cause, to wit:

I.

The Court erred in holding that the special answer alleging the want of legal capacity to maintain this suit, inasmuch as he was not the administrator of Edward Hegman, deceased, was insufficient, and requiring the defendant to answer further.

II.

The Court erred in admitting in evidence to the jury the certified copies of the probate proceedings in the matter of the estate of Edward Hegman, deceased.

III.

The Court erred in sustaining the objection of the plaintiff to testimony of the witness, James Pianfetti, tending to show that if Hegman, the deceased, and the plaintiff had objected to working in the shaft where the accident happened, without a chain ladder, the chain ladder would have been put in.

IV.

The Court erred in refusing the motion of the defendant, made at the conclusion of the whole testimony, to instruct the jury to return a verdict for the defendant.

V.

The Court erred in instructing the jury as follows: "In defining the duties of the master toward the servant, I cannot do better than to use the language of the Supreme Court of the United States: 'A master employing a servant impliedly engages with him that the place in which he is to work, and the tools or machinery with which he is to work, or by which he is to be surrounded, be reasonably safe. It is the master who is to provide the place and the tools and the machinery, and when he employs one to enter his service he impliedly says to him that there is no other danger in the place, the tools, the machinery, than such as is obvious and necessary. Of

course, some places of work and some kinds of machinery are more dangerous than others; but that is something which inheres in the thing itself, which is a matter of necessity, and cannot be obviated. But within such limits, the master who provides the place, the tools, and the machinery owes a positive duty to his employee in respect thereto. That positive duty does not go to the extent of a guaranty of safety, but it does require that reasonable precaution shall be taken to secure safety; and it matters not to the employee by whom that safety is secured or the reasonable precautions therefor taken. He has a right to look to the master for the discharge of that duty; and if the master, instead of discharging it himself, sees fit to have it attended to by others, that does not change the measure or obligation to the employee, or the latter's right to insist that reasonable precautions shall be taken to secure safety in these respects. Therefore, it will be seen that the question turns rather on the character of the act than on the relation of the employees to each other. If the act is one done in the discharge of some positive duty of the master to the servant, then negligence in the act is negligence of the master. But if it be not one in the discharge of such positive duty, then there should be some personal wrong on the part of the employee before he is held liable therefor. But it may be asked: Is not the duty of seeing that competent and fit persons are in charge of any particular work as positive as that of providing safe places and machinery? Undoubtedly, it is, and requires the same vigilance in its discharge, but the latter duty is discharged

when reasonable care has been taken in providing safe place and machinery, and so the former is as fully discharged when reasonable precautions have been taken to place fit and competent persons in charge. Neither duty carries with it an absolute guaranty. Each is satisfied with reasonable effort and precaution.’”

VI.

The Court erred in instructing the jury as follows: “If he [meaning Pope] had absolute charge of that particular department, and exercised the powers and duties of the master toward the employees working under him, he was a vice-principal.”

“If you find from the weight of the evidence in this case, that Pope, the foreman, was the vice-principal of the company or corporation defendant, and that said Hegman lost his life through the careless and negligent act of said Pope, without any negligence on the part of Hegman himself, then you should find for the plaintiff.”

VII.

The Court erred in instructing the jury as follows:

“There is some evidence before you in reference to a certain chain ladder ordered to be furnished to the men in sinking the shaft, and that said ladder was a reasonable and proper means used, or to be used, by the men sinking the shaft, whereby they might escape from danger in case of accident to the other machinery and appliances used in hoisting the men from the shaft at such times as blasts were exploded. If you find from the weight of the evidence in this case that said ladder was

furnished to the men for their use in this behalf, and through the carelessness and negligence of the men engaged in the work of blasting in the shaft, and that the deceased, Hegman, was one of those, and that the men could have escaped from impending danger had the ladder been put in place, and they negligently and carelessly failed to put it in place, then this was contributory negligence upon the part of the deceased and the other men working with him such as relieved the defendant from all liability for his death. If, on the other hand, that such ladder was not furnished to the employees, and was not put in place because of the orders of the said Pope, if you find Pope to have been a vice-principal, and that the death of Hegman resulted from the failure to put in said ladder and by the shutting off the air by Pope, or under his orders and direction, so that the other machinery and appliances for hoisting the men could not be operated; and you further find that Pope was so acting, in shutting off the air, was exercising duties entrusted to him as a vice-principal of the master, then the defendant is liable for the death of the said Hegman."

VIII.

The Court erred in refusing to set aside the verdict of the jury and grant a new trial.

And for the errors assigned, and others manifest of record herein, The Alaska United Gold Mining Company, plaintiff in error, prays that the judgment of the lower Court be reversed, and this cause remanded with instruc-

tions to grant a new trial, and on such trial to award a nonsuit.

(Signed) MALONY & COBB,
Attorneys for The Alaska United Gold Mining Company,
Plaintiff in Error.

[Endorsed]: No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, Plaintiff, vs. Alaska United Gold Mining Co., Defendant. Assignment of Errors. Filed May 7, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Defendant.

Afterwards a citation in error was issued, which with the return thereon is as follows, to wit:

In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSET, as Administrator of the Estate of Edward Hegman, Deceased,

Plaintiff,

vs.

No. 23A.

THE ALASKA UNITED GOLD MINING CO.,

Defendant.

Citation (Copy).

United States of America—ss.

To Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, on the 20th day of June, 1901, pursuant to a writ of error, filed in the clerk's office of the United States

District Court for Alaska, Division No. 1, at Juneau, wherein the Alaska United Gold Mining Company is the plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated May 13th, 1901.

(Signed) MELVILLE C. BROWN,

Judge.

United States,
 District of Alaska, } ss.
 Division No. 1.

I hereby certify that I received the within citation of error May 20th, 1901, and served the same May 20th, 1901, in Juneau, Alaska, by delivering to W. E. Crews, one of plaintiff's attorneys a certified copy of the within citation, certified to by Malony & Cobb, defendant's attorneys, to the said W. E. Crews personally.

Dated Juneau, May 20th, 1901.

JAMES M. SHOUP,

United States Marshal.

By W. S. Staley,

Office Deputy.

[Endorsed as follows]: No. 23A. In the United States District Court for Alaska, Division No. 1, at Juneau. Henry Muset, as Admr. of the Est. of E. Hegman, Dec'd, Plaintiff, vs. The Alaska United Gold Mining Co., Defendant. Citation in Error. Filed May 20th, 1901. W. J. Hills, Clerk. Malony & Cobb, Attorneys for Deft.

Afterwards the Court made the following order, which was entered of record, to wit:

In the United States District Court for Alaska, Division No. 1, at Juneau.

HENRY MUSET, as Administrator of
the Estate of Edward Hegman, De-
ceased,

Plaintiff,

vs.

ALASKA UNITED GOLD MINING
CO.,

Defendant.

Order Extending Time to File Transcript.

Upon motion of Messrs. Malony & Cobb, attorneys for the defendant, and plaintiff in error, it is ordered that the time within which to file the transcript of the record herein in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended until the 20th day of June, 1901.

Dated May 13th, 1901.

(Signed) M. C. BROWN,

Judge.

Clerk's Certificate to Transcript.

The United States of America, }
 District of Alaska, } ss.
 Division No. 1. }

I, W. J. Hills, clerk of the United States District Court for the District of Alaska, Division No. 1, do hereby certify that the above and foregoing and hereto annexed ninety-six pages are a full, true and correct transcript of the records and files of all the proceedings in the therein mentioned cause of Henry Muset, as Administrator of the Estate of Edward Hegman, Deceased, vs. The Alaska United Gold Mining Company, as the same appears of record and on file in my office, and that the same is in accordance with the command of the writ of error in said cause allowed, except as to such papers as have been filed after the date thereof.

That this transcript has been prepared by the plaintiff in error and the costs of examination and certificate, amounting to \$6.35, has been paid to me by the plaintiff in error.

In testimony whereof, I have hereunto set my hand and caused the seal of Court to be hereunto affixed at Juneau, Alaska, on this 4th day of June, 1901.

[Seal]

W. J. HILLS,
 Clerk United States District Court for District of Alaska,
 Division No. 1.

[Endorsed]: No. 710. In the United States Circuit Court of Appeals for the Ninth Circuit. The Alaska United Gold Mining Company, Plaintiff in Error, vs. Henry Musset, as Administrator of the Estate of Edward Hegman, Deceased, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for Alaska, Division No. 1.

Filed June 13, 1901.

F. D. MONCKTON,

Clerk.

